



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

# HUMAN RIGHTS

ANNUAL REPORT 2008

THE PSNI PROGRAMME OF ACTION  
TRAINING  
POLICY  
OPERATIONS  
CODE OF ETHICS  
COMPLAINTS, DISCIPLINE AND CIVIL ACTION  
PUBLIC ORDER  
USE OF FORCE  
COVERT POLICING  
VICTIMS  
TREATMENT OF SUSPECTS  
HUMAN RIGHTS AWARENESS IN THE  
POLICE WITH THE COMMUNITY

# Foreword

I am pleased to present this 4th Human Rights Annual Report published by the Northern Ireland Policing Board (the Board).

The Board has a statutory duty to monitor the performance of the Police Service of Northern Ireland (PSNI) in complying with the Human Rights Act 1998.

The Board was of course the first oversight body in the UK to have a statutory responsibility to ensure a police service complies with the Human Rights Act. This best practice has since been extended to Police Authorities in England and Wales.

For policing to be effective and secure the confidence of the community it is essential that human rights standards are integrated into and applied to all aspects of policing. This ensures that both the rights of the police and the public are properly protected.

This detailed report records progress during the last year, makes a number of recommendations for the year ahead and includes an assessment of progress of the implementation of recommendations outstanding from previous reports.

Members of the Board's Human Rights & Professional Standards Committee have specific responsibility for scrutinising this work and assisted by the expertise of its Human Rights Advisors will oversee the implementation of recommendations made in this Report.

Over the last 5 years Keir Starmer QC and Jane Gordon have provided invaluable assistance and guidance in developing the Board's framework for monitoring this critical area. Keir stood down from his role as Advisor to the Board in May 2008 and on behalf of the Board I would like to thank him for his work.

I would like to thank Jane Gordon for her work in producing the report this year. I am very grateful also for the contribution of Human Rights Consultants Alyson Kilpatrick and Marisa Leaf.



Professor Sir Desmond Rea  
Chairman

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# Introduction

The Human Rights Act 1998, which came into force on 2 October 2000, marked a turning point in the protection of human rights in the UK. It requires all public authorities - including the police - to act in a way which is compatible with the individual rights and freedoms contained in the European Convention on Human Rights. It provides individuals with remedies if a public authority breaches their human rights. However, it does not set up a mechanism for monitoring compliance with human rights.

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The position for the Police Service of Northern Ireland (PSNI) is different. The Police (Northern Ireland) Act 2000 specifically requires the Northern Ireland Policing Board to monitor the performance of the PSNI in complying with the Human Rights Act 1998. In 2003, Keir Starmer QC and I were appointed to advise the Policing Board how to meet this statutory duty. Since then, we have published three Human Rights Annual Reports (2005, 2006 and 2007), two Special Reports, one on the policing of the Ardoyne parades 12 July 2004 and the second on the policing of the Ardoyne parades 12 July 2005 and the Whiterock parade 10 September 2005. We have also published detailed advice on the PSNI's proposal to introduce Taser for use in Northern Ireland (May 2007) and two interim reports (July 2007 and January 2008) on the PSNI's progress in implementing the recommendations made by the Police Ombudsman in her Operation Ballast Report of 22 January 2007, with a third interim report due to be published in October 2008.

In February 2008, Keir Starmer QC stood down as human rights advisor to the Policing Board. Keir was recently appointed Director of Public Prosecutions for England and Wales. Congratulations are due to Keir on this important appointment and I wish him every success in his new role.

As it is close to five years since we first designed the Policing Board's human rights monitoring programme, we have spent time this year reviewing the Policing Board's monitoring strategy. This is timely given the positive progress the PSNI has demonstrated towards establishing internal systems, processes and procedures which should ensure human rights compliance. It is appropriate and proper that the Policing Board reflect this progress in the level of scrutiny it provides to the PSNI's human rights compliance. I have introduced the Board's new human rights monitoring framework in part this year and this work will continue next year. This year's human rights annual report concentrates on investigating the PSNI's response to recommendations made in our three previous annual reports. The report's developmental work focuses on particular areas of concern that have arisen over the course of the year, such as the PSNI use of stop and search powers, PSNI internal auditing of the use of force, the PSNI's policy on suspension of officers and the management, security and disclosure of data and information held by the PSNI. The recommendations which I have made this year are purposely more broadly drawn to enable the Policing Board's Human Rights Annual Report to become the tool by which the Policing Board audits the procedural mechanics of PSNI human rights compliance, i.e. the scrutiny of PSNI internal processes and procedures, such as the bi-annual

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human rights auditing of training materials, the annual review of PSNI policies and procedures, the six monthly reports of PSNI Professional Standards Department activities and investigations, and the management, retention and disclosure of data and information.

This refined approach to human rights annual reporting provides the Policing Board with the capacity to introduce a new element into its human rights monitoring framework: annual human rights thematic inquiries. These human rights thematics will focus on specific subject areas and involve detailed scrutiny and review of those areas of policing activity. A core element of the thematic inquiries will be community consultation and engagement. The Policing Board intends to publish written reports with its findings and recommendations at the conclusion of each human rights thematic. In May 2008, the Policing Board announced its first human rights thematic inquiry. The Policing Board's Human Rights Thematic 2008 will consider the PSNI's approach to tackling domestic violence against women.

I now present the fourth Human Rights Annual Report, for 2007/2008. In it I plot the PSNI's progress in implementing the recommendations made in our 2007 Annual Report, together with those outstanding recommendations from our 2005 and 2006 Annual Reports. In the course of this year's monitoring work, I have spent a great deal of time with those responsible for the PSNI's work on human rights, examining processes and systems designed to ensure human rights compliance and analysing numerous documents and statistics. As in previous years, I have sat in on operations, observed operational decision-making in PSNI Command rooms and on the ground, interviewed officers and reviewed all the available documentation and records. I have also spent time with those affected by the PSNI's work and consulted interested parties on a wide range of matters relevant to this report.

Once again, I would like to record that it is a tribute to the PSNI that in carrying out my work over the last twelve months, I have not been refused access to any officer, or to any incident or event that I have wanted to observe. I have been given unrestricted access to any documentation I have asked to inspect. This has now become the hallmark of the PSNI commitment to human rights compliance.

In our 2007 Annual Report, we made 44 new recommendations and recorded 14 recommendations from 2006 and 12 recommendations from 2005 remained outstanding, either in whole or in part. I am pleased to report this year that

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only three recommendations from a total of 149 recommendations made in 2005, 2006 and 2007 now remain outstanding. Of the 60 recommendations made in 2005, 56 have been implemented in full by the PSNI and 4 have been formally withdrawn. Of the 45 recommendations made in 2006, 42 have been implemented in full by the PSNI and 3 have been formally withdrawn. Of the 44 recommendations in 2007, 37 have been implemented in full by the PSNI, 4 have been formally withdrawn and 3 remain outstanding. Recommendations have been withdrawn over the last three years either because they have been replaced by a more appropriate recommendation in subsequent annual reports or because they have become defunct or been superseded.

The PSNI is to be congratulated on its commitment to implementing the recommendations we have made over the course of the last three years. I recognise the hard work that has been undertaken to achieve this impressive result. The challenge the PSNI now faces is developing and sustaining a positive human rights culture amongst its officers at all ranks, from probationer to Chief Constable.

In this year's Annual Report, I make a total of 30 recommendations. The reduced number of recommendations reflects the real progress that has been made by the PSNI over the last five years but provides a renewed focus on areas where further progress is needed. On a positive note, I am pleased to report that our very serious concerns regarding the PSNI's continued failure to complete its internal review of all policies and procedures are now being addressed. Much work has been done by the PSNI this year to implement an effective internal policy review. This remains a work in progress but the outlook is encouraging. And, while I have made a number of recommendations in relation to training in this year's annual report, the commitment the Police College has demonstrated over the last two years to entrenching a human rights based approach to training remains clear, despite the loss of the human rights training adviser. Also, in some areas, for example complaints, discipline, public order and covert policing, for the third year running there has been a sustained high level of compliance with our recommendations.

A further positive is the introduction of the new PSNI Code of Ethics 2008, which came into force on 10 March 2008, and the efforts that the PSNI has made over the last three years to entrench the Code of Ethics, itself based on international human rights standards, and make it a living document which guides the conduct and behaviour of all PSNI officers.

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In October 2007, responsibility for national security intelligence work transferred from the PSNI to the Security Services. Shortly before the transfer of primacy, we reported to the Policing Board that we were satisfied that the necessary accountability of the PSNI should be maintained through the requirement that PSNI personnel working in liaison with the Security Service remain subject to all legislation, policy and procedure governing PSNI actions and remain accountable to the Chief Constable, the Policing Board and the Police Ombudsman. As such, there should be no diminution of the PSNI's ability to comply with the Human Rights Act 1998 or the Policing Board's ability to monitor such compliance. Since October 2007, I have had a series of meetings with senior officers within PSNI Crime Operations to discuss the working arrangements between the PSNI and the Security Service. Certain issues have arisen over the period but overall, the arrangements in place appear to be working satisfactorily. Clearly in the current context of dissident activity, it remains critical that the two Services work in partnership to ensure the effective operation of systems for the sharing and dissemination of intelligence.

Concerns remain, however, that although progress has been made this year in relation to the PSNI internal policy review, four years after its commencement, the review is yet to be fully completed. It is fundamental that the PSNI's policies and procedures 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. This work must be completed urgently. Also of concern are reports which have highlighted officers' own anxieties regarding their level of knowledge and understanding of basic police powers, such as stop and search. It is imperative that the PSNI takes immediate and effective steps to correct this training gap. Concerns also remain regarding the small but nonetheless significant number of officers resigning while under criminal or disciplinary investigation. And finally, while the PSNI has now introduced an electronic system for use of force monitoring, an internal mechanism for auditing uses of force across the PSNI appears to remain absent. It is critical that the PSNI establishes an effective internal mechanism to audit uses of force in order to identify any trends which may cause concern and ensure any necessary remedial action is taken.

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During the course of 2008, I have continued to advise the Policing Board on the PSNI's proposal to introduce Taser. The Policing Board are meeting to discuss the Chief Constable's proposal to permanently issue Taser to specialist and authorised firearms officers in October 2008.

I would like to thank Alyson Kilpatrick and Marisa Leaf, both human rights consultants, for their contribution to the preparation of this Annual Report. I am grateful to them both for their careful and thoughtful work.

Finally, it is worthy of note that the statutory duty to monitor the performance of the police in complying with the Human Rights Act 1998, which was imposed on the Policing Board by the Police (Northern Ireland) Act 2000, has recently been extended to all police authorities in England and Wales. The Police Authorities (Particular Functions and Transitional Provisions) Order 2008, which came into force on 14 March 2008, requires all police authorities in England and Wales to monitor the performance of their respective police forces in complying with the Human Rights Act 1998. I conclude by commenting that the Policing Board and the PSNI can both be satisfied that they are at the forefront of delivering on this important statutory duty.

**Jane Gordon**  
**25 September 2008**

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# Chapter 1: THE PSNI PROGRAMME OF ACTION

In our first Human Rights Annual Report in 2005, we recommended that the PSNI should adopt a specific Programme of Action on an annual basis to respond to the Policing Board's recommendations in relation to the PSNI's duty to comply with the Human Rights Act 1998. The PSNI agreed to this recommendation and has now produced three annual human rights programmes of action for 2005-2006, 2006-2007 and 2007-2008.

# 01

The PSNI published its third Human Rights Programme of Action in January 2008,<sup>1</sup> which was distributed to the Policing Board, specific officers within the PSNI. The Human Rights Programme of Action 2007-2008 was also made available on the PSNI website. I therefore consider Recommendation 1 of our 2007 Annual Report to be implemented in full.

In the foreword to the PSNI's Programme of Action 2007-2008, the Chief Constable, Sir Hugh Orde stated,

"This Programme of Action sets out our main areas of development in human rights for the coming year and provides a response to the Policing Board's Human Rights Annual Report of 2007. We have welcomed the interaction with the Board and its advisors, Keir Starmer QC and Jane Gordon, which has provided an informed critique of contemporary issues in applying human rights law to law enforcement."<sup>2</sup>

Last year, we recorded the observation of the Oversight Commissioner in his final report of May 2007 that the approach we have adopted of requiring the PSNI to respond to the Policing Board's annual human rights annual reports "in effect makes a human-rights implementation plan a continuing obligation for the police service."<sup>3</sup> This is the intention. I therefore once more reiterate the recommendation that the PSNI should draw up and publish an annual Human Rights Programme of Action within three months of the Policing Board's human rights annual reports.

### **Recommendation 1:**

**The PSNI should draw up and publish an annual Human Rights Programme of Action within three months of the Policing Board's human rights annual reports.**

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1. PSNI Human Rights Programme of Action 2007-2008.  
2. PSNI Human Rights Programme of Action 2007-2008, p.1.  
3. Office of the Oversight Commissioner, Report 19, May 2007, p.25.

# Chapter 2: TRAINING

Effective training on human rights principles and practice is critical to any organisation committed to compliance with the Human Rights Act 1998. The key objective for police services is to ensure officers understand the practical impact these principles have on their core policing functions and duties.

# 02

I have devoted a large amount of time in the last three years to working with the PSNI to ensure frameworks and processes are in place to ensure PSNI training at all levels, within the Police College and across districts, complies with the requirements of the Human Rights Act 1998 and fully integrates human rights standards and principles. The PSNI has shown considerable commitment and dedication to this project. All Police College training materials have now been audited to ensure relevant human rights standards and principles are fully integrated. Mechanisms have also been put in place to ensure that all new training courses designed by the PSNI (including district training courses) adopt a standard approach and are human rights compliant. Work remains to be done to ensure that trainers are adequately trained in human rights, and have access to specialist human rights expertise, and to establish a credible and effective framework for the internal evaluation of training. I report on current progress below.

## **APPOINTMENT OF HUMAN RIGHTS TRAINING ADVISER**

In our 2006 Annual Report, we recommended that the PSNI should recruit a human rights training adviser without delay.<sup>1</sup> The PSNI accepted our recommendation and the Police College appointed a human rights training adviser on 16 October 2006.<sup>2</sup> The first human rights training adviser left the PSNI in August 2007. The Police College has regrettably not yet recruited a new human rights training adviser.

I record my disappointment in the delay in recruiting a new human rights training adviser. However, I am aware that the delay in the most part is not due to any lack of effort of the Police College. It is, however, imperative that this post is filled as rapidly as possible. I therefore reinstate the recommendation that the PSNI should recruit a human rights training adviser without delay. I make further recommendations regarding the role and functions of the human rights training adviser below.

### **Recommendation 2:**

**The PSNI should recruit a human rights training adviser without delay.**

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1. 2006 Annual Report, Recommendation 3, p.8.

2. PSNI's Human Rights Programme of Action 2006-2007, p.9.

## PSNI AUDIT OF TRAINING MATERIALS

In our 2007 Annual Report, we reported that during 2006/2007 the Police College conducted an audit of training materials in two stages. In stage 1, PSNI trainers conducted an initial screening of all training materials.<sup>3</sup> During stage 2 of the audit, two consultants<sup>4</sup> used the completed initial screening tools to assess the quality of the training materials. The screening document, lesson plans and supporting material were evaluated for all courses delivered by the Police College. The human rights training adviser was responsible for overseeing both stages of the audit process. Any training materials failing stage 2 of the audit process were to be returned to the relevant trainer to remedy omissions or deficiencies.

Last year, we reported we had inspected the results of the stage 2 evaluation of the Police College's audit of training materials. Overall, we were impressed by the approach adopted but our examination of some of the audit forms indicated that on a number of occasions, relevant Articles of the European Convention on Human Rights and the PSNI Code of Ethics, as well as key pieces of legislation and PSNI policy and guidance, had not been identified by the consultants as requiring incorporation into the training materials. We noted that we had raised our concerns with the Police College's Human Rights Training Adviser and Human Rights Compliance Officer. In response to our concerns, the human rights training adviser commenced her own review of the completed audit forms.<sup>5</sup>

Following completion of the human rights audit, the human rights training adviser produced a report setting out the main outcomes and trends emerging from the audit and making ten recommendations to remedy the deficiencies in training materials which had been identified during the human rights audit process. These recommendations were intended to assist trainers required to make amendments to training materials following the human rights audit and inform the development of training materials by the Police College in the future. The human rights training adviser's report was disseminated to all trainers at the same time that audited training materials were returned to them.

Trainers were instructed to make the identified amendments to their training materials and submit their revised materials to the Police College's Quality Assurance Unit for final review. All Police College training materials which were identified during the audit process as requiring amendment or revision were reviewed by the Quality Assurance Unit in the Autumn of last year. Against this background, I am satisfied that Police College training materials have integrated

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3. The Police College's human rights training adviser devised the initial human rights screening tool for use by trainers and held a training exercise on the purpose and objectives of the human rights audit.
  4. Two consultants were contracted through the Police Rehabilitation and Retraining Trust. Both consultants came from a policing background with relevant experience in training, human rights and quality assurance.
  5. 2007 Annual Report, chapter 2, pp.10-12.

human rights principles and consider Recommendation 2 of our 2006 Annual Report and Recommendation 4 of our 2005 Annual Report to be implemented in full.

In our 2007 Annual Report, we indicated that we intended to ask the Police College for evidence of the adoption and implementation of these recommendations and points of good practice by trainers following completion of the quality assurance review in Autumn 2007. I have been informed by the Police College that the recommendations have been passed to the Police College training design specialists, who play a central role in the redesign of training courses and in the annual review of existing training materials. It is also anticipated that the design specialist will attend the Transitional Justice Institute human rights courses for trainers.<sup>6</sup>

Whilst I consider the establishment of training design specialists a positive development, I remain concerned that little action has been taken to implement the recommendations made by the human rights training adviser in 2007 which were made to assist the integration of human rights principles into all PSNI training programmes in a practical and effective manner. I therefore make the recommendation that the PSNI should provide evidence of the adoption and incorporation of the recommendations set out in the PSNI human rights training adviser's 2007 report into standard PSNI training design within six months of the publication of this report.

### **Recommendation 3:**

**The PSNI should provide evidence to the Policing Board of the adoption and incorporation of the recommendations set out in the PSNI human rights training adviser's 2007 report into standard PSNI training design within six months of the publication of this report.**

## **POLICE COLLEGE BI-ANNUAL AUDIT OF TRAINING MATERIALS**

In 2007, we reported that the Police College intended to develop a mechanism for auditing PSNI training materials on a bi-annual basis<sup>7</sup> and that this may be integrated within its quality assurance process already undertaken on an annual basis.<sup>8</sup> Discussions between the Police College Head of Operational Programmes, Head of Quality Assurance and myself are ongoing regarding the precise framework for this bi-annual audit of training materials. It is important that

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6. Letter Police College to Policing Board's human rights advisor dated 11 July 2008.

7. Every two years.

8. Meeting between Policing Board's human rights advisors and the Police College on 20 November 2006.

this regulatory framework is agreed and put in place without further delay. I therefore recommend that the PSNI should put in place the regulatory framework for a bi-annual audit of training materials within the next six months.

#### **Recommendation 4:**

**The PSNI should put in place the regulatory framework for a bi-annual audit of training materials within the next six months.**

### **DISTRICT TRAINING**

The Head of the Police College does not have direct responsibility for district training, although he is responsible for standards, costs and planning of training across the PSNI.<sup>9</sup> District Commanders are responsible for trainers and training delivered in their respective districts. It is important to acknowledge that the nature of district training is different to training delivered centrally. District trainers often develop and deliver “one-off” training sessions at short notice. As such, materials are often not systematically generated or designed.

Given that up to 35% of training is delivered outside the Police College,<sup>10</sup> it is critical that the PSNI has in place a system to audit the development and delivery of such training. In our 2007 Annual Report, we were critical of the lack of any systematic or strategic approach to the design of district training, the lack of central support provided to district trainers and the PSNI’s failure at any level to monitor or quality assure the content of this training. We reported, however, that the PSNI planned to introduce new arrangements for the oversight of district training.<sup>11</sup> We therefore recommended that the PSNI should produce a report in March 2008 setting out the outcomes and findings to date of the audit of district training materials.<sup>12</sup> We further recommended that the PSNI should report in January 2008 on its progress in establishing the Professional Development Units within each of its eight District Command Units (DCUs) and the establishment of a central team based within the Police College at Garnerville to assist and support district trainers in the provision of training at district level.<sup>13</sup>

District training materials were not included within the Police College human rights audit. This was in part due to the more ad hoc design of training courses devised at district level. The consequence is that no formal audit has been completed of district training materials. However, following the internal restructuring of the PSNI District Command Units earlier this year, the PSNI established Professional

9. Head of Police College, Training Strategy Steering Group Minutes, 14 December 2006.

10. Ibid.

11. 2007 Annual Report, chapter 2, pp.13-14.

12. 2007 Annual Report, Recommendation 2.

13. 2007 Annual Report, Recommendation 3.



Development Units (PDUs) within each of its new eight DCUs to provide a co-ordinated approach to professional development, including training at the district level.

The Police College has reported that communications and business processes between the College and districts have improved significantly.<sup>14</sup> In February 2008, the Police College established a joint forum of Police College representatives, PDU Managers and district trainers to co-ordinate and devise lesson plans for district trainers to deliver at district level. District trainers now have full access to the Police College's electronic database of lesson plans and materials, the college's human rights and forensic trainers and have received presentations from the Head of Learning Support and the PSNI's E-learning Development Officer.<sup>15</sup> The result is that from this time onwards, all district training materials will be devised by the Police College, the joint forum or by district trainers in collaboration with specialist advisers.

The establishment of the joint forum is a constructive attempt by the Police College to address the systemic deficiencies we identified in the design of district training and the lack of support provided to district trainers. This, together with the other initiatives adopted by the Police College, should ensure that district training courses and materials are consistent and fully integrate human rights principles. However, clearly this new design process for district training is in its early stages and it is difficult to evaluate the impact it will have. Against this background, I consider Recommendation 3 of our 2007 Annual Report to be implemented in full. I withdraw Recommendation 2 of our 2007 Annual Report and replace it with the new recommendation that the PSNI should provide the Policing Board's human rights advisor with a schedule of all new district training courses devised by the Police College, the joint forum and/or district trainers, together with course outlines and materials, within six months of the publication of this report.

#### **Recommendation 5:**

**The PSNI should provide the Policing Board's human rights advisor with a schedule of all new district training courses devised by the Police College, the joint forum and/or district trainers, together with course outlines and materials, within six months of the publication of this report.**

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<sup>14.</sup> Letter Police College to Policing Board's human rights advisor dated 11 July 2008.

<sup>15.</sup> Ibid.

## TRAINING ON POSITIONAL ASPHYXIA

In our 2007 Annual Report, we reported on the training provided by the PSNI on positional asphyxia and indicated that the PSNI had developed a handout for officers on positional asphyxia and excited delirium.<sup>16</sup> The PSNI has now issued the handout. I have reviewed the final revision of the handout and am satisfied that it sets out the causes, risk factors, signs and symptoms and action to take in relation to both positional asphyxia and excited delirium.

## PERSONAL SAFETY PROGRAMMES

In our 2007 Annual Report, we reported on the student officer and operational officer personal safety training programmes.<sup>17</sup> Our observation of the programmes indicated that Foundation trainers and Operational Command Unit trainers employed slightly differing approaches to personal safety training. We noted that we had raised this point directly with the Police College and were informed that an internal Personal Safety Programme practitioners' forum had been established in May 2007. The Committee brings together trainers from Foundation Training, Operational Command Units and Combined Operational Training to ensure that personal safety training is delivered consistently (and in compliance with ACPO standards) by PSNI trainers.

I have been provided with the terms of reference of the Personal Safety Programme practitioners' forum and a short report on the activities of the forum over the last twelve months.<sup>18</sup> The forum has recently conducted an assessment of the personal safety techniques currently used by PSNI officers and has taken steps to standardise the delivery of training to DCUs.<sup>19</sup> It appears to be a useful mechanism for monitoring and standardising personal safety training delivery.

In our 2007 Annual Report, we recorded some minor reservations regarding the adequacy of the integration of human rights principles in the practical aspects of the personal safety training courses. We reported that our reservations were not strong enough to warrant a recommendation, but suggested that the PSNI's internal evaluation team<sup>20</sup> consider the points raised as part of its human rights audit of training delivery.<sup>21</sup> I report further on the activities of the internal evaluation team later in this chapter. The internal evaluation team has not yet evaluated the personal safety training courses. I therefore this year make a formal recommendation that the PSNI internal evaluation team should evaluate the integration of human rights principles in the practical aspects of PSNI personal safety training courses within the next 12 months.

16. 2007 Annual Report, Chapter 2, p.16.

17. During 2007, we attended a number of training sessions for (i) student officers, delivered a part of the Foundation Training Programme and (ii) operational officers, delivered by PSNI Operational Command Unit.

18. Email PSNI Head of Combined Operational Training dated 20 August 2008.

19. Ibid.

20. Discussed later in this chapter.

21. 2007 Annual Report, chapter 2, p.18.

**Recommendation 6:**

**The PSNI internal evaluation team should evaluate the integration of human rights principles in the practical aspects of PSNI personal safety training courses within the next 12 months.**

**STUDENT OFFICER TRAINING**

In our 2007 Annual Report, we outlined the changes that had been made to the PSNI student officer training programme and set out details of the training provided to probationers.<sup>22</sup> We reported that we were satisfied that the current student officer training programme and the probationer training provided by the PSNI met the intentions behind Recommendation 43 of our 2006 Annual Report but noted that we would continue to monitor the perceived adequacy of this training with District Command Teams.

The PSNI is seeking to re-accredit its Student Officer Training Programme so that students who successfully complete the training programme attain a Certificate of Higher Education, Level 1.<sup>23</sup> This higher level of accreditation is achieved through the accreditation of areas of the current programme that are not currently accredited (27%) and the introduction of case studies and additional methods of assessment to develop and enhance learning. As part of the re-accreditation process, the PSNI reviewed the entire Student Officer Training Programme and its delivery.<sup>24</sup> One of the key findings of the review team was that student officers were provided with a high level of knowledge during the twenty-one week programme but were not provided with sufficient opportunities to apply that knowledge in a practical environment. It has been decided that as part of the re-accreditation process, the training programme will be revised to realign the balance between the knowledge content of the programme and the practical application of the programme. In light of the findings of the human rights researchers (see below), I welcome this decision which is both constructive and practical. The Policing Board will continue to monitor the PSNI student officer training programme as part of its general annual human rights assessment.

**FIREARMS TRAINING**

In our 2007 Annual Report, we outlined the PSNI's new approach to firearms training and endorsed this new approach.<sup>25</sup> We also noted that we had observed and been impressed by the PSNI's revised human rights and use of force element of its firearms refresher training. We reported that human rights principles

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<sup>22.</sup> 2007 Annual Report, chapter 2, p.19.

<sup>23.</sup> Police College, Note on Review of Student Officer Training Programme, August 2008.

<sup>24.</sup> Ibid.

<sup>25.</sup> 2007 Annual Report, chapter 2, p.23.

and standards were integrated throughout the lesson and that the facilitated discussion that followed the knowledge check provided officers with clear and comprehensive guidance on the human rights standards applicable to the use of force and PSNI policy on the use of firearms.<sup>26</sup> Nevertheless, for a number of minor reasons we recommended that the PSNI internal evaluation team should evaluate the effectiveness of the human rights and use of force element of the firearms refresher training within nine months of our 2007 Annual Report.<sup>27</sup>

The internal evaluation team evaluated the effectiveness of the human rights and use of force elements of the firearms refresher training during August - October 2007. A total of four evaluations were completed, together with an evaluation of generic firearms refresher training provided to members of PSNI Tactical Support Groups (TSGs). The Chair of the internal evaluation team (the PSNI human rights adviser) reported full compliance by trainers with the evaluation and recorded that the training is extremely useful in highlighting key human rights principles through a case study approach.

The evaluation noted the ability of trainers (i) to relate concepts such as necessity and proportionality to practical operational examples and (ii) to explain the different tests for the use of force in simple, non-technical language. However, in line with comments in our 2007 Annual Report,<sup>28</sup> the Chair of the internal evaluation team recorded that the applied case study “has a definite ‘shelf-life’ and there is general consensus that a range of lessons, based on different scenarios, need to be developed”.<sup>29</sup> The case study element of the training was discontinued in 2008 due to its familiarity to officers.

In July 2008, the PSNI human rights legal adviser produced a number of summaries of relevant ECHR cases which are available to officers on the PSNI intranet. In September 2008, as Chair of the PSNI internal evaluation team, the human rights legal adviser observed the judgmental element of the firearms refresher training and reported that trainers are now incorporating these summaries during debriefs to assist them in explaining key human rights principles and concepts to officers.

Against this background, I consider Recommendation 4 of our 2007 Annual Report to be implemented in full but make the further recommendation that the PSNI should continue to develop, on an ongoing basis, a series of appropriate case summaries for use in firearms refresher training which reflect developments in human rights standards and principles.

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26. 2007 Annual Report, chapter 2, p.24.

27. 2007 Annual Report, Recommendation 4.

28. 2007 Annual Report, chapter 2, p.25.

29. PSNI Human Rights Legal Adviser, Interim Report on Internal Evaluation of the Delivery of Human Rights Training by the PSNI, November 2007.

**Recommendation 7:**

**The PSNI should continue to develop, on an ongoing basis, a series of appropriate case summaries for use in firearms refresher training which reflect developments in human rights standards and principles.**

ACC Urban and ACC Rural monitor attendance at firearms refresher training at their six monthly accountability meetings with each of their respective District Command Units (DCUs). Combined Operational Training regularly informs the regional ACCs of levels of attendance at firearms refresher training across their respective Regions.

In the 12 months since July 2007, 78% of officers in Urban Region attended firearms refresher training twice. This represents an increase on the 76% attendance rate in 2006/2007. Urban Region made 6196 firearms refresher training places available, with officers filling 4807 of those places. 77% of Rural Region officers attended firearms refresher training twice over the same period. Again, this represents an increase in the 75% attendance rate in 2006/2007. Rural Region made 5446 firearms refresher training places available, with officers filling 4220 of those places. 100% of Operational Command Unit officers attended firearms refresher training twice over the period.<sup>30</sup>

**HUMAN RIGHTS REFRESHER TRAINING**

In our 2006 Annual Report, we recommended that the PSNI should introduce within the next 12 months a programme of human rights specific refresher training, which should be offered in a strategic and targeted way and include bespoke scenarios tailored to the operational roles of officers.<sup>31</sup> The final report of the Oversight Commissioner endorsed this recommendation and indicated that all police personnel should periodically receive refresher training in human rights. Specifically, the Oversight Commissioner suggested that as human rights training is most effective in operational contexts, district trainers should be encouraged to take advantage of human rights issues arising on a day-to-day basis to provide focused, relevant and on-the-spot training.<sup>32</sup>

In our 2006 Annual Report, we also recommended that each PSNI District Command team should devise its own approach to district level human rights refresher training.<sup>33</sup> In our 2007 Annual Report, we set out the areas of human rights law and practice on which District Commanders considered their officers

30. Letter ACC Rural to Policing Board's human rights advisor dated 6 August 2008.

31. 2006 Annual Report, Recommendation 8, p.12.

32. Office of the Oversight Commissioner, Report 19, May 2007, p.25.

33. 2006 Annual Report, Recommendation 9, p.13.

required additional training or guidance.<sup>34</sup> In general, District Commanders considered that training should be provided by means of short briefings, posters or aide memoirs that were contextualised to everyday policing scenarios. We reported that the PSNI had indicated that, in consultation with district trainers, the Police College intended to develop a bank of human rights training materials appropriate and relevant in design and content for training at district level which district trainers would be free to draw on.<sup>35</sup>

In our 2007 Annual Report, we set out PSNI's progress in implementing these two recommendations, reporting that two human rights researchers<sup>36</sup> had been appointed to work alongside PSNI Criminal Justice department to identify and address human rights difficulties and human rights training requirements of officers at district level. A project team comprising representatives of Criminal Justice department and the Police College was established and a project methodology agreed.<sup>37</sup> We concluded that our recommendations had been implemented in part and recorded that we would report further in this year's annual report.

The PSNI human rights researchers' report was completed in April 2008. The PSNI has provided me with a copy of the report.<sup>38</sup> The report identifies Recommendation 8 of our 2007 Annual Report as the catalyst for the project.<sup>39</sup> The project involved a total of 37 focus groups across PSNI districts, with 229 participants.<sup>40</sup> The focus groups discussed the following themes:<sup>41</sup>

- a.** human rights knowledge and engagement;
- b.** stop and search powers;
- c.** investigation and lawful gathering of evidence;
- d.** use of force;
- e.** arrest; detention and unlawful imprisonment;
- f.** protection of life;
- g.** public order, parades and protests.

The discussion themes closely mirror the areas of human rights law and practice identified by District Commanders as requiring further training (which we set out in our 2007 Annual Report). The report sets out the views and comments

34. 2007 Annual Report, chapter 2, p.28.

35. Against this background, we considered recommendation 9 of our 2006 Annual Report to be implemented in part.

36. Dr Ken Bishop BSc (Hons), PhD and Paul Casey LLB, LLM (Barrister-at-Law).

37. 2007 Annual Report, chapter 2, p.27.

38. Operational Issues Regarding Human Rights and their Practical Application within the Police Service of Northern Ireland, April 2008 (the Bishop/Casey report).

39. Bishop/Casey report, p.3.

40. Between three to five focus groups were conducted across each PSNI DCU. In addition, focus groups were conducted with groups of officers from Urban and Rural Serious Crime departments in Crime Operations, Urban and Rural traffic and the Child Abuse and Rape Enquiry Unit.

41. Bishop/Casey report, pp.4 and 32.

expressed by officers attending the focus groups, emphasising that it “is not a survey, enquiry or audit of the PSNI. It is not within the remit of this report to make recommendations or to offer solutions.”<sup>42</sup>

I summarise the PSNI human rights researchers’ report findings below.

1. Human rights are firmly placed at the core of policing.<sup>43</sup> Officers consider that the PSNI is rigorous in its pursuit of putting human rights considerations at the centre of its event planning procedures.<sup>44</sup>
2. Most officers are clearly aware of human rights issues as they affect the PSNI and while they have some concerns, it is clear that they are engaging with the issues.<sup>45</sup>
3. There is a level of “human rights theory fatigue” and a view that human rights principles are not integrated adequately into all areas of police training.<sup>46</sup> Officers suggest that training should emphasise that the concept of human rights plays an important part in policing and reinforces officers’ core policing obligations under s.32 of the Police (Northern Ireland) Act 2000 and officers suggest that it would be useful to have an accessible updated guide to positive human rights case studies “illustrating where human rights have assisted frontline policing”.<sup>47</sup>
4. There is a lack of training or briefings about police officers’ own human rights.<sup>48</sup> Concerns were also expressed about the personal safety of individual officers, particularly when engaging groups and on single office patrol.<sup>49</sup>
5. Officers said the current firearms training incorporates human rights training in a practical and effective way.<sup>50</sup>
6. General confidence in the use of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE).<sup>51</sup>
7. Some uncertainty around the use of force. Clarification specifically requested around (i) the use of CS spray and (ii) the use of handcuffs on children and young people.<sup>52</sup>
8. Junior officers are less confident of their powers (e.g. powers to stop and search; powers to deal with anti-social behaviour; powers to arrest and

42. Bishop/Casey report, p.5.  
43. Bishop/Casey report, p.5.  
44. Bishop/Casey report, p.11.  
45. Bishop/Casey report, p.5.  
46. Bishop/Casey report, p. 9.  
47. Bishop/Casey report, p.38.

48. Bishop/Casey report, p.50.  
49. Bishop/Casey report, p.14.  
50. Bishop/Casey report, p.12.  
51. Bishop/Casey report, p.37.  
52. Bishop/Casey report, p.45.

detain children and young people).<sup>53</sup> There is a degree of confusion about police powers to stop members of the public from returning to their homes (or places of business) during public order operations.<sup>54</sup>

9. Need for more training on legislation and police powers. Officers identified difficulties caused by delays in receiving legislative updates.<sup>55</sup>
10. Acknowledgment of the rights of victims. Constables were particularly clear that victim support was important to their role as police officers.<sup>56</sup>
11. Issues were identified in relation to arrest and detention of suspects, in particular the application of the necessity criteria and the justification for detention. Officers highlighted communication problems between arresting officers and the custody officers, with arresting officers at times perceiving that certain custody officers make subjective decisions and custody officers in turn reporting frustration at arresting officers' lack of legislative knowledge. Officers also reported unnecessarily lengthy delays in gaining access to custody suites.<sup>57</sup>
12. Concerns about the use of police cells for immigration detainees and "exposing the Organisation to breaching human rights legislation".<sup>58</sup>
13. Officers are confident using the Regulation of Investigatory Powers Act 2000 (RIPA) because they know the process ensures they are human rights compliant.<sup>59</sup>
14. Human rights obligations have helped develop a culture of good record keeping and human rights procedures have assisted investigation.<sup>60</sup>
15. Perception by junior officers that there is no internal mechanism to support officers who are the subject of Police Ombudsman's investigations. Widely held belief amongst constables that "if mistakes happen they have no one to turn to for support".<sup>61</sup>

The matters raised at points 7, 8, 9 and 11 above regarding uncertainty around the use of force and police powers in general; junior officers' lack of confidence regarding their powers, especially in relation to children and young people; and issues relating to arrest and detention of suspects raise significant human rights concerns.

53. Bishop/Casey report, pp.7-8 and 13.

54. Bishop/Casey report, p.7

55. Bishop/Casey report, pp.55 and 60.

56. Bishop/Casey report, p.52.

57. Bishop/Casey report, p.13.

58. Bishop/Casey report, p.47.

59. Bishop/Casey report, p.57.

60. Bishop/Casey report, pp.58 and 61.

61. Bishop/Casey report, p.40.



The Police College has considered and responded to the human rights researcher's 2008 report. Recognising that "the report identifies a number of areas where training could assist and offer clarification for operational officers",<sup>62</sup> the Police College has commissioned its joint forum (see above) to complete seven pieces of work on the following:<sup>63</sup>

- a.** police stop and search powers;
- b.** police powers to restrict movement of the public under public order legislation;
- c.** arresting officers interaction with custody officers;
- d.** use of CS spray;
- e.** use of force, restraint and potential arrest of children and young people;
- f.** mental health legislation and its policing implications; and
- g.** voluntary attendance.

The Police College has also disseminated the human rights researchers' 2008 report to the Heads of Foundational Training, Combined Operational Training and Leadership Programmes to enable each to integrate relevant findings into their respective training programmes.<sup>64</sup>

Against this background, I consider Recommendations 8 and 9 of our 2006 Annual Report to be implemented in full. In light of the Police College's positive and productive response to the PSNI's human rights researchers' 2008 report, I make no further recommendations at this stage. The Policing Board will monitor the activities of the Police College's joint forum and the PSNI response to the human rights researchers' 2008 report as part of its annual human rights assessment.

## HUMAN RIGHTS TRAINING FOR TRAINERS

In our 2007 Annual Report, we reported that the five week training course for trainers had recently been reviewed to ensure that human rights were integrated effectively and appropriately. We noted that the human rights training adviser delivered a two-day component on human rights integration. I understand,

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<sup>62.</sup> Internal letter Police College to PSNI Criminal Justice department dated 25 June 2008.

<sup>63.</sup> Ibid.

<sup>64.</sup> Ibid.

however, that trainers in the Police College Trainer Development Unit have revised and updated this component since the departure of the human rights training adviser. I have been provided with the lesson plan and associated case study materials by the Police College. These are practical and straightforward and should assist trainers to integrate human rights principles in a more accessible and operational manner. This is critical if human rights are to be effectively understood and applied by officers.

In our 2007 Annual Report, we also recorded that the human rights training adviser had designed a one day human rights refresher course for specialist trainers. Between December 2006 and July 2007, the human rights training adviser held three such refresher courses.<sup>65</sup> It is regrettable that with no human rights training adviser in place, no such refresher courses have been run since July 2007. The Police College has now asked the PSNI human rights legal adviser to prepare a general one day human rights refresher course for trainers.<sup>66</sup> This is a positive short term measure. However, I recommend that following the appointment of a human rights training adviser, the PSNI should re-instate annual bespoke human rights refresher courses for specialist trainers delivered by the human rights training adviser.

### **Recommendation 8:**

**Following the appointment of a human rights training adviser, the PSNI should re-instate annual bespoke human rights refresher courses for each of its specialist training teams delivered by the human rights training adviser.**

We also reported last year on the bespoke five day course on human rights for PSNI trainers delivered by the Transitional Justice Institute of the University of Ulster commissioned by the Police College in early 2007.<sup>67</sup> We commended the PSNI's introduction of this short human rights course for trainers, which was clearly a necessary step to remedy a gap in training for trainers. We recommended that the PSNI should appoint human rights champions within each of its specialist training teams, and make a mandatory requirement of the role that all human rights champions complete the human rights short course in the first year of their appointment.<sup>68</sup>

The PSNI has now appointed human rights champions within each of the five specialist training teams.<sup>69</sup> The Police College Human Rights Compliance Officer chairs meetings of the champions which are held on a quarterly basis. The

65. The first course was designed for all Police College trainers, the second for trainees from Combined Operational Training and the third for Crime Trainers.

66. Email Police College to Policing Board's human rights advisor dated 12 August 2008.

67. 2007 Annual Report, chapter 2, p.30.

68. 2007 Annual Report, Recommendation 5.

69. The five specialist teams are Special Operations Branch, Combined Operational Training; Foundation Training; Leadership and Development and Crime Training.

human rights champions act as sources of human rights advice and identify human rights training needs within their specialist training areas, assist training design specialists on human rights matters and liaise with the PSNI human rights training adviser and PSNI human rights legal adviser on human rights practice and procedure.<sup>70</sup>

A total of 33 trainers have completed the human rights trainers' course run by the Transitional Justice Institute. To date, one of the PSNI human rights champions has attended this course and the Police College has made arrangements for the remaining human rights champions to attend in Autumn 2008.<sup>71</sup> It is critical that the human rights champions complete the Transitional Justice Institute human rights trainers course as a first step to becoming sources of human rights advice within their specialist training areas and the Policing Board will monitor their attendance at this course and subsequent (external and internal) human rights refresher courses over the next twelve months.

The establishment of the human rights champions is welcome and their defined role appears focused and constructive. Against this background, I consider Recommendation 5 of our 2007 Annual Report to be implemented in full. Clearly, however, the integration of human rights champions within the Police College is in its early stages. It is therefore difficult to evaluate the impact the role will have. The Policing Board will continue to monitor the activities of the human rights champions and report further in next year's Annual Report.

## INTERNAL EVALUATION OF HUMAN RIGHTS TRAINING AND DELIVERY

In our 2007 Annual Report, we reported that the PSNI had established an internal evaluation team chaired by the PSNI human rights legal adviser to evaluate the delivery of the human rights aspects of all training (with the exception of Special Operations Branch) and highlight areas for improvement.<sup>72</sup> The first meeting of the team took place in June 2007 when a working methodology, a human rights audit tool and evaluation guidelines were agreed. The internal evaluation team set an objective of completing 65 training evaluations in the first six months.

As part of this year's work, I have monitored the work of the PSNI internal evaluation team. The evaluation team completed 13 evaluations in the first six months and failed to conduct any evaluations in the period December 2007 to June 2008. This is very disappointing. I will return to discuss the reasons

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70. Letter Police College to Policing Board's human rights advisor dated 11 July 2008, enclosing paper entitled Human Rights Champion Role.

71. Letter Police College to Policing Board's human rights advisor dated 11 July 2008.

72. Although we note that the PSNI human rights legal adviser and the Police College's human rights training adviser have both reviewed aspects of Special Operations Branch training and will continue to do so.

behind the very low number of evaluations conducted. First, I set out details of the evaluations completed and the internal evaluation team's general findings and observations.

The 13 evaluations carried out focused on training on the use of force (8 out of the 13 evaluations), including the revised firearms refresher training.<sup>73</sup> The internal evaluation team report full compliance by trainers with the evaluations and record no difficulties in relation to either announced or unannounced evaluations. This is to be welcomed. The internal evaluation team reported that "many trainers are extremely good at communicating key concepts, such as proportionality, examination of alternatives, record keeping, etc, in a clear and easy-to-understand manner. They are also able to explain how to integrate these concepts into the decision-making process".<sup>74</sup>

However, the internal evaluation team reported that "trainers feel that they do not have sufficient knowledge, or access to appropriate advice, in order to deal comprehensively with human rights issues in detail".<sup>75</sup> Of particular concern was the finding that some trainers are not fully familiar with, or able to adequately communicate, the differing tests for the use of force. The internal evaluation team recognised that this is a significant problem which could result in the use of excessive force by officers or the use of an inappropriate method of applying force. I agree and, in light of the findings of the PSNI human rights researchers' 2008 report (see above), I make the recommendation that the Police College should review the concerns raised by the internal evaluation team regarding training on the use of force and consider how best to remedy the identified lack of familiarity with the differing tests for the use of force on the parts of some trainers.

### **Recommendation 9:**

**The Police College should review the concerns raised by the internal evaluation team regarding training on the use of force and consider how best to remedy the identified lack of familiarity with the differing tests for the use of force on the parts of some trainers.**

Finally, the internal evaluation team report that formal assessments of officers' knowledge do not appear to play a sufficiently strong role in training. The internal evaluation team suggests that "there may be a place for some form of monitoring the level of knowledge of participants before and after attendance at courses."

73. The internal evaluation team evaluated the following courses: three elements of Foundation training (including firearms), handgun refresher (x 4); method of entry ; building entry; use of force judgmental training; police search requalification; simmunition and civilian induction.

74. PSNI Human Rights Legal Adviser, Interim Report on Internal Evaluation of the Delivery of Human Rights Training by the PSNI, November 2007.

75. PSNI Human Rights Legal Adviser, Interim Report on Internal Evaluation of the Delivery of Human Rights Training by the PSNI, November 2007.

The Policing Board will monitor the Police College's response to this and other practical suggestions made by the PSNI internal evaluation team.

Turning now to the number of internal evaluations conducted, the internal evaluation team reported that 13 examinations were conducted between July 2007 and July 2008. In fact, all 13 of these evaluations were completed in the first five months and no evaluations were conducted between December 2007 and July 2008. This figure constitutes only 20% of the evaluation team's objective of conducting 65 evaluations in the first six months.

The Chair of the internal evaluation team, in his second interim report on the team's activities, recorded that there have been difficulties around the functioning and methodology of the internal evaluation team. In essence, only a few members of the internal evaluation team are actually conducting evaluations. Team members voluntarily agree to conduct evaluations and there is no mechanism to direct members to conduct a minimum number of evaluations.<sup>76</sup> The Chair of the internal evaluation team suggested that various revisions should be made to the team, noting that "the team is aware of the importance of the exercise, not only in terms of compliance with Policing Board recommendations, but also in terms of assisting in the further improvement of human rights training across the police service."<sup>77</sup>

I consider that the internal evaluation team has a significant role to play in monitoring the content and delivery of PSNI training courses and maintaining accuracy of content, integration of human rights standards and consistency of delivery across training disciplines. I am concerned, however, that the internal evaluation team appears to have stalled in its first year of operation. However, the PSNI does appear to be making some efforts to remedy the difficulties the team has experienced this year.<sup>78</sup>

Against that background, I make the recommendation that the PSNI internal evaluation team should conduct no less than 45 evaluations of PSNI training courses delivered across the PSNI<sup>79</sup> over the next 12 months and report its findings and recommendations to the Policing Board on a quarterly basis. In the event that the Policing Board is not satisfied with the PSNI's internal evaluation of training delivery by next year's Annual Report, the Policing Board may feel obliged to require the PSNI to put in place a system for the external evaluation of PSNI training delivery in the alternative.

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76. PSNI Human Rights Legal Adviser, Second interim report of internal evaluation of the delivery of human rights training by the PSNI, July 2008.

77. Ibid.

78. For example, the Chair of the internal evaluation team is due to publish an article in the PSNI internal magazine, *Callsign*, requesting additional volunteers.

79. By the Police College, Combined Operational Training, at district level and elsewhere.

**Recommendation 10:**

**The PSNI internal evaluation team should conduct no less than 45 evaluations of PSNI training courses delivered by the PSNI over the next 12 months and report its findings and recommendations to the Policing Board on a quarterly basis.**

**EXTERNAL EVALUATION OF DELIVERY OF HUMAN RIGHTS TRAINING**

In our 2006 Annual Report, we recommended that the PSNI should put in place a scheme for the expert and comprehensive evaluation of the delivery of PSNI training on human rights by December 2006.<sup>80</sup> In our 2007 Annual Report, we reported that the external training evaluator had been appointed<sup>81</sup> and terms of reference agreed, with an external evaluator due to submit a final report to the PSNI in October 2007. We concluded that we would await completion of his report and the PSNI's response to it before assessing whether this process satisfied the intention behind Recommendation 12 of our 2006 Annual Report and Recommendation 7 of our 2005 Annual Report. We therefore considered these recommendations to be implemented only in part.

The external evaluator's report was submitted to the Police College in April 2008. I set out below an overview of the report's methodology and findings.

**Objectives and methodology**

The external evaluation identified two objectives of the evaluation. First, to determine the effectiveness of training in human rights terms and second, to contribute to the planning, monitoring and evaluation framework of PSNI training. The evaluation process included desk review of documents; visits to PSNI training centres; observation of training programmes, one-off practicals and external training of trainers; individual and group interviews with trainers and trainees; and discussion with PSNI management.

**Integration of human rights standards into training material**

In assessing the extent to which PSNI training is effective in promoting policing based on applicable human rights norms (the first objective), the report considered:

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<sup>80.</sup> 2006 Annual Report, Recommendation 12, p.15.

<sup>81.</sup> The International Human Rights Network is a non-governmental organisation which supports states, intergovernmental organisations and the private sector in applying human rights based approaches in their work.

- a. the legal accuracy of reference to and discussion of human rights standards in PSNI training materials;
- b. the human rights culture within PSNI training; and
- c. the role of the human rights training adviser.

The external evaluator recognised that the initial stages of the evaluation were conducted in parallel with the PSNI human rights audit. He reviewed samples of audited lesson plans and concluded that the audit represented a step towards greater consistency of training documentation and timely updating of human rights content of lesson plans.

The evaluator acknowledged that “human rights have perhaps greater visibility across training than most police organisations in the UK, even in Europe”<sup>82</sup> but was critical of the lack of coverage of international human rights norms (beyond the ECHR) relevant to policing within training materials and recommended the systematic incorporation of relevant international human rights standards.

The evaluator also noted that “views were expressed to the evaluation team that human rights based policing can be in tension with effective policing, and that the human rights emphasis in policing in Northern Ireland is primarily due to politics”. The report advocated addressing these concerns as a core training strategy and suggested that the concept of human rights would be better understood if it was more thoroughly integrated into PSNI training material. By way of example, the report referenced the PSNI Trainers’ Handbook on Core Themes Integration and noted that it categorises human rights, diversity and professional standards as distinct from each other and of differing levels of priority. The evaluator was concerned that this may prevent a holistic understanding of human rights.

### Training Delivery

The evaluator commended the greater emphasis placed by the PSNI on communication and negotiation skills, scenario-based problem-solving and self and peer assessment following the introduction in 1999 of a new student training curriculum. However, again the report recommended further emphasis on practical integration of human rights into training<sup>83</sup> and the report was critical of what it termed PSNI’s ‘mechanistic’ approach, which unduly focused on trainees being asked to identify relevant Articles of the ECHR or recall the facts of relevant case law and was limited in providing sufficient practical help to police officers in operational decision-making.

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<sup>82</sup>. External evaluator report, p.13.

<sup>83</sup>. External evaluator report, p.14.

The evaluator commended the core of committed and experienced trainers working for the PSNI. However, he commented that some of the training he observed did not meet the standards set down in the Training of Trainers course in terms of methodology and/or substantive understanding of human rights. Beyond legal accuracy, the report highlighted the lack of capacity of some trainers to go beyond citing human rights provisions relevant to the subject matter of the training programme. The evaluator recorded that a cross-section of trainers had expressed a lack of confidence in their ability to comprehensively integrate human rights issues in their areas of policing expertise. The report identified the PSNI Training of Trainers course as a logical starting point for building the capacity of trainers to integrate human rights into their training and recommended an injection of human rights training expertise in support of the Training of Trainers team and provide targeted follow-up. Further recommendations included the development of a forum for the exchange of trainer know-how and best practice. The evaluator suggested that a trainer mentoring scheme and increased use of specialised expertise would also help to build trainer capacity.

### Assessment

Assessment currently includes informal feedback to trainees after practicals, informal knowledge checks and formal examination of practicals and classroom knowledge. The report identified concerns by students that sufficient guidance is not provided as to what is required from them.<sup>84</sup> Similarly, the report reported that Foundation Training multiple choice exams reveal the percentage of questions answered correctly but do not address knowledge gaps. Informal assessment was reported to be unstructured and inconsistent between groups of trainees.

### Foundation Training

The report noted that the volume of information in the Foundation Training human rights module is acknowledged by all (the facilitator, the Foundation training teams, trainees and the evaluation team) to be unfeasible. The separation of the human rights module also had the potential to foster the idea of human rights as a distinct aspect of police training. The report noted that whilst the use of external speakers/trainers is overall a positive feature, it has developed in an unplanned way which poses challenges for overall cohesion and quality control. The evaluator therefore recommended that all ad hoc and/or external training contributions should be supervised by a single lead trainer.

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<sup>84</sup>. External evaluator report, p.16.



## Human Rights Training Adviser

The evaluator considered the role of the PSNI human rights training adviser a sign of the PSNI's commitment to developing human rights based training by enhancing the integration of human rights through the development of PSNI trainers' human rights knowledge. However, the report concluded that greater clarity of the role of the PSNI human rights training adviser was required, including the level of on-call support that trainers should expect.

## Evaluation/Monitoring of PSNI Training

The evaluator examined both the internal and the external framework adopted by the PSNI as part of the second objective. The report stated that there was a lack of clarity as to how the various internal and external mechanisms related to each other, if at all. The evaluator recommended that the PSNI review the current fractured architecture to establish a systematic scheme for co-ordinating and supervising both internal and external monitoring and evaluation activities.<sup>85</sup> The report advocated setting benchmarks and indicators to measure the impact of training on actual policing, as opposed to merely classroom assessment/feedback. The evaluator suggested that this would help to inform the efforts of trainers and provide the Police College with a mechanism through which it could identify both positive impacts of particular training as well as training needs or gaps.

## Observations

The External Human Rights Training Evaluation is a detailed and wide-ranging report which makes a number of pertinent recommendations. I agree that human rights should be integrated in all police training in a three dimensional manner which provides practical guidance to officers and assists and informs operational decision-making. The Police College is establishing a working group to discuss the range of recommendations made in the external evaluator's report and are already actively considering options regarding the establishment of a trainer mentoring scheme.<sup>86</sup> Against this background, I consider Recommendation 12 of our 2006 Annual Report and Recommendation 7 of our 2005 Annual Report to be implemented in full. However, I remind the PSNI that the need to monitor and evaluate training is ongoing and refer to the recommendations I have already made regarding the PSNI's bi-annual internal audit of training materials and the effective operation of the PSNI internal evaluation team. I therefore make no further recommendations regarding external evaluation of training at this time but the Policing Board will continue to scrutinise PSNI's internal mechanisms for monitoring training development and delivery.

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<sup>85.</sup> External evaluator report, p.37.

<sup>86.</sup> Police College Head of Operational Programmes, 11 August 2008.

## TRAINING STRATEGY STEERING GROUP

In our 2007 Annual Report, we noted that the PSNI had established a Training Strategy Steering Group. The Group develops the PSNI Training Strategy and Annual Training Plan. It is chaired by ACC Urban and meets on a quarterly basis.<sup>87</sup> An official of the Policing Board attends the meetings of the Group.

As part of this year's monitoring work, I have reviewed the minutes of all meetings of the Training Strategy Steering Group held since December 2006. The Group devises the PSNI Training Strategy through consultation with the Police College, District Commanders and PSNI Heads of Departments regarding identified training needs. The Group monitors the status of implementation of training recommendations made to the PSNI by a number of oversight bodies, including the recommendations contained in the Policing Board's Human Rights Annual Reports.

In 2007/2008, the Group monitored the provision of training on the changes in police powers following the revision of PACE; changes to firearms training; the establishment and development of PDUs within the eight districts; and the provision and delivery of custody training. In February 2008, the Group discussed the measures in place to ensure officers were aware of and understood the new Code of Ethics 2008. Of note is the reference within the June 2008 minutes to a discussion regarding stop and search powers following the findings of the human rights researchers' report of 2008. I have already made a recommendation in chapter 2 of this report regarding the delivery of further training on stop and search powers as a matter of priority. The Group also requested the Police College to conduct some initial research around training on dynamic risk assessment.

The PSNI Training Strategy Steering Group is a well focused, constructive cross-departmental group which should ensure that the PSNI continues to develop a strategic and practical approach to the development and delivery of training by the PSNI, both centrally through the Police College and at district level through the PDUs and district trainers.

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<sup>87</sup>. Training Strategy Steering Group, Terms of Reference.



# Chapter 3: POLICY

Police policies govern the conduct of all police officers, setting out police powers and duties and providing guidance on legislation and policing practice. It is fundamental that PSNI policies set a framework for police decision-making and conduct that requires, and seeks to ensure, human rights compatibility in all areas of police work. If PSNI policies are human rights compliant, decision-making, training and action taken according to those policies each ought itself to be human rights compliant.

# 03

## PSNI POLICY AUDIT

In our 2005 Annual Report, we conducted a detailed audit of PSNI policies in twelve randomly selected areas.<sup>1</sup> We found the policies to be, in the main, informative and detailed, but we observed that a number of policies made only cursory reference to human rights standards and principles. Our findings highlighted the need for all policies to be reviewed.<sup>2</sup> In our 2006 Annual Report, we reported that the PSNI had not commenced its review of all existing policies for compliance with its General Order on Policy, Procedure and Guidance. The PSNI was, at that time, in the process of verifying each of its 700 General Orders and sections of the Service Code to ensure they remained current. We therefore recommended that the PSNI should complete the verification exercise and its substantive review of all existing PSNI policies within 12 months.<sup>3</sup> We indicated at that time that the Policing Board would conduct a further audit of PSNI policies and service procedures once the review had been completed by the PSNI.<sup>4</sup>

In last year's Annual Report, we reported that in July 2007, the PSNI had informed us that the review of PSNI policies and procedures was "now 95% complete" and that policy owners were now responsible for reviewing policies and service procedures on an annual basis.<sup>5</sup> We therefore conducted a second audit of PSNI policies, which included an examination of policies posted on the PSNI intranet.<sup>6</sup> We concentrated on ten policy areas and raised particular concerns in relation to six of those. We recorded a number of general findings following our second audit of PSNI policies in 2007. First, it was clear from our review that several policies had not been reviewed or reissued since our initial policy audit in 2005. This meant that some of the policies we reviewed were out of date and did not take legislative developments into account. Second, a number of policies that predated the Human Rights Act 1998 had still not been revised to contain references to the Act or to relevant Articles of the European Convention on Human Rights. Third, other policies failed to include any, or made only cursory reference to, human rights principles and standards and the Code of Ethics. There was thus inconsistency and confusion.<sup>7</sup>

We concluded that our random audit and our examination of the PSNI intranet showed that very few of the fundamental concerns that we set out in 2005 had been addressed. Rather than simply repeating for a third year running the recommendations that we had made, we required the PSNI to formally report to the Policing Board within three months of publication of our 2007 Annual Report,

1. These areas were: (i) deaths in custody, (ii) investigations into unexplained deaths, (iii) bail and arrests, (iv) disclosure, (v) relations with the military, (vi) complaints, (vii) transparency, (viii) equality, (ix) children, (x) victims, (xi) the role of defence lawyers, and (xii) operational briefing.  
 2. 2005 Annual Report, Recommendations 8 and 9, p.168.  
 3. 2006 Annual Report, Recommendations 13 and 14, p.18-19.  
 4. 2005 Annual Report, Recommendation 14, p.169.

5. Letter from ACC Operational Support to Policing Board's human rights advisors dated 23 August 2007.  
 6. The 2007 audit was carried out to implement Recommendation 14 of our 2005 Annual Report.  
 7. 2007 Annual Report, chapter 3, p.43.

explaining the status of its internal policy review, with a detailed timetable for completion of the review exercise.<sup>8</sup>

Between October 2007 and January 2008, I had a series of monthly meetings with the PSNI policy review team to discuss the status of the policy review. We discussed in detail the problems which the team had experienced with the policy review process. The team acknowledged that this was the first time the PSNI had sought to identify and collate all of its policies and service procedures in one central source and that it had taken a significant period of time to complete this initial exercise. We discussed and agreed the review team's proposed methodology for completion of the audit.

In January 2008, the PSNI reported to the Policing Board on the status of its internal review. I therefore consider Recommendation 6 of our 2007 Annual Report and Recommendation 13 of our 2006 Annual Report to be implemented in full. At that time, of the 48 PSNI policy directives identified, 44 were active and 4 had been cancelled or were due to be cancelled. 25 of the 44 active policy directives had been reviewed and 19 remained outstanding. Of the 419 service procedures, 295 remained active, 97 were due to be cancelled and 27 had no identified PSNI departmental owner. Of the 295 active service procedures, 147 had been reviewed and 148 remained outstanding.<sup>9</sup>

During 2008, I continued to meet and correspond with the PSNI policy review team on a regular basis regarding the status of the internal policy review. In Table 1 below, I set out the status of PSNI's review of policy directives and service procedures as at 18 August 2008.<sup>10</sup> Table 1 indicates that there are currently 50 PSNI policy directives and 270 PSNI service procedures in existence. In total, 31 of the 50 policy directives and 170 of the 270 service procedures have been reviewed and revised as part of the PSNI policy review process. Six policy directives and 175 service procedures have been cancelled. Table 1 also highlights that 41 more service procedures are available on the PSNI intranet (311) than are currently in existence (270). This difference is due to duplication of 10 service procedures on the intranet and the identification of 31 service procedures which are due for cancellation but have not been removed due to technical difficulties.<sup>11</sup>

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8. 2007 Annual Report, Recommendation 6.

9. PSNI policy review team statistics as at 15 January 2008.

10. Letter PSNI Operational Support to Policing Board's human rights advisor dated 18 August 2008.

11. *Ibid.*

**Table 1:**

Status of PSNI policy directives and service procedures, August 2008

	Policy Directives	Service Procedures
Currently in existence	50	270
Cancelled	6	175
Reviewed and revised	31	170
Available on the PSNI intranet	50	311
Available on the PSNI internet	49	0

Table 1 demonstrates, and I can confirm, that over the last year, much work has been done by PSNI Operational Support to identify and review its current policy directives and service procedures, to cancel policies and procedures which are out of date or no longer relevant and to ensure that the PSNI intranet only contains current policies and procedures. However, the statistics indicate that 19 policy directives and 100 service procedures have not yet been reviewed and revised as part of the internal review process. Further, officers continue to be in the position that they may be referring to policies or procedures on the PSNI intranet that have been cancelled or superseded. During the course of my monitoring work over the last six months, I myself have experienced a number of cases where officers have provided me with versions of service procedures which are out of date or with policy directives which have not yet been formally issued. This is extremely disappointing.

I can report that the PSNI is now prioritising for review and revision those policies and service procedures which most obviously raise human rights concerns. This is a welcome and practical step. However, I had been assured that the PSNI internal policy review would be completed in its entirety by the end of July 2008. This is not the case. To reflect the work that has been completed by PSNI Operational Support, I withdraw Recommendation 14 of our 2006 Annual Report and Recommendation 9 of our 2005 Annual Report and replace them with the new recommendation that the PSNI should complete its internal review of *all* current policy directives and service procedures by the end of December 2008 and formally report to the Policing Board in January 2009.

**Recommendation 11:**

**The PSNI should complete its internal review of *all* current policy directives and service procedures by the end of December 2008 and formally report to the Policing Board in January 2009.**

In July 2008, I wrote to PSNI Operational Support requesting current versions of a number of policies and procedures which we had criticised in our 2007 Annual Report. I subjected these to a further audit this year to evaluate whether they had been reviewed and revised as part of the PSNI internal policy audit process. I report my findings below and in other relevant chapters of this report.

### Procedure on deaths in custody

We reported in 2007 that the PSNI policy on dealing with deaths in custody<sup>12</sup> had not been updated since 2001. We considered that the policy could be enhanced by including reference to relevant articles of the European Convention of Human Rights (ECHR) and to relevant articles of the Code of Ethics, as well as by cross referencing to other PSNI policies and including a notification telephone number for the Police Ombudsman. That policy has now been reviewed and was reissued on 18 January 2008 as a service procedure.<sup>13</sup> It covers four categories of deaths following police contact:<sup>14</sup> (i) fatal road traffic incidents involving the police; (ii) fatal shooting incidents involving the police; (iii) deaths in or following custody; and (iv) deaths during or following other types of contact with the police. The policy covers the initial action to be carried out by the senior officer on duty, the role of the district commander, investigative primacy, and Police Ombudsman's guidance to officers who will be subject to interview following the death of a member of public following police contact.

The procedure includes express reference to specific articles of the Code of Ethics,<sup>15</sup> although none of these are cited in full or their relevance and application explained. Appropriate references are made to ECHR Article 2 (the right to life). Other relevant policies are cross referenced in the document. The emergency response telephone number for the Police Ombudsman is also now included.

### Procedure on bail and arrests

We expressed concern in our 2007 Annual Report that many of the policies instructing police officers on both the content of legislation relating to bail and arrests and, more generally, on practice and procedure relating to bail and arrests had not been reviewed or reissued since our initial policy audit in 2005. We highlighted in particular the PSNI's policy on bail applications. That policy was reissued on 15 March 2007.<sup>16</sup> The new policy reflects the important new amendments made by the Criminal Justice (Northern Ireland) Order 2003 to the Magistrates' Courts (Northern Ireland) Order 1981 which took effect from 12 March 2007 and outlines the new provisions as a result of Articles 7-10 of the

12. General Order No. 55/01 Interim guidelines for dealing with deaths in police custody.

13. Service Procedure No. 5/2008, Procedures for dealing with deaths following police contact, 18 January 2008.

14. Reflecting the revised definition contained in Home Office Circular 13/2002, 26 March 2002.

15. Service Procedure No. 5/2008, Procedures for dealing with deaths following police contact, 18 January 2008, para.7

16. General Order No. 16/2007, Bail under Part V of the Police and Criminal Evidence (Northern Ireland) Order 1989 and Associated Amendments to the Magistrates' Courts (Northern Ireland) Order 1981. The policy has subsequently been subject to a further annual review and was reissued on 21 August 2008.



2003 Order: Article 7 amends the criteria under which police take certain bail decisions; Article 8 enhances the powers and duties of the police in granting bail, including enabling conditions to be attached to the grant of police bail after charge; Article 9 provides a person granted bail the statutory right to apply to a magistrates' court for the fresh grant of bail or for different bail conditions; Article 10 enables a magistrates court, on application by the prosecution, to reconsider the decision of a magistrate's court or a police custody officer to grant bail. The new policy also makes appropriate references to ECHR Article 5 (the right to liberty and security).

### Procedure on disclosure

Our 2007 Annual Report again highlighted that there had been no review of PSNI disclosure policies since our initial audit in 2005. As a result, those policies failed to incorporate amendments to the Criminal Procedure and Investigations Act 1996 introduced by the Criminal Justice Act 2003. We were particularly concerned that the policy outlining the Attorney General's guidelines included an out of date version of the guidelines and failed to take account of changes introduced by the Criminal Justice Act 2003.

I have been provided with the PSNI policy on the Attorney General's Guidelines, which was reissued as a service procedure on 23 July 2008.<sup>17</sup> The procedure does now take account of the Criminal Justice Act 2003. It also makes appropriate references to ECHR Article 6 (right to a fair trial) and includes the current Attorney General's Guidelines.

### General findings

The findings of my selective audit are a great deal more positive than the findings of our 2007 audit. The policy directives and service procedures which I have reviewed have been revised and clearly incorporate relevant human rights standards. My audit, however, is insufficient to reach a firm conclusion regarding the overall adequacy and effectiveness of the PSNI internal policy review. I have therefore spent time over the past six months discussing with the PSNI the integration of a quality assurance element within its policy review process to ensure that once policies and procedures are recorded by PSNI departments<sup>18</sup> as reviewed and revised, there is some process of dip-sampling undertaken to ensure that the revised policies and procedures are accurate and integrate human rights standards and principles.

17. Service Procedure SP 31/2008, Disclosure of Information in Criminal Proceedings under the Criminal Procedure and Investigations Act 1996: AG's Guidelines.

18. PSNI Departments are required to review and revise the policies and procedures which fall within their specialist area as part of the PSNI policy review process.

PSNI Operational Support agreed to develop a methodology for dip-sampling PSNI policy directives and service procedures. In July 2008, the PSNI provided me with its proposed methodology.<sup>19</sup> I made a number of comments on that methodology<sup>20</sup> which the PSNI in large part accepted.<sup>21</sup> In summary, the PSNI has suggested that a dip-sample of 15% of all current PSNI policy directives and 15% of a pool of 70 current PSNI service procedures will be reviewed bi-annually as part of the PSNI quality assurance process. I am satisfied that this quality assurance element of the PSNI policy review process will ensure that PSNI policies and procedures are accurate and human rights compliant. Nevertheless, I make the recommendation that the PSNI should report to the Policing Board on the findings of the two dip-sampling exercises completed in 2008/2009 as part of the quality assurance element of the internal policy review and action taken by the PSNI in response to any deficiencies identified in the policies and procedures sampled.

#### **Recommendation 12:**

**The PSNI should report to the Policing Board on the findings of the two dip-sampling exercises completed in 2008/2009 as part of the quality assurance element of the internal policy review and action taken by the PSNI in response to any deficiencies identified in the policies and procedures sampled.**

### **ACCESS TO SENSITIVE PSNI POLICIES**

In our 2007 Annual Report, we recorded that we had not been provided with adequate evidence that the PSNI had completed its review of how policies considered too sensitive to be generally available on the PSNI intranet site are to be indexed, updated and kept.<sup>22</sup> We therefore considered Recommendation 10 of our 2005 Annual Report and Recommendation 15 of our 2006 Annual Report to remain outstanding and stated that we would pursue this with PSNI Operational Support and PSNI Crime Operations in the coming year. I report on PSNI's overarching review of intelligence policies and procedures in chapter 9 of this report. In light of this review, I consider Recommendation 15 of our 2006 Annual Report and Recommendation 10 of our 2005 Annual Report to be defunct. I therefore withdraw these recommendations. The Policing Board will continue to monitor the review of PSNI covert policing policies and procedures as part of its annual human rights assessment.

19. Letter PSNI Operational Support to Policing Board's human rights advisor dated 4 July 2008.

20. Letter Policing Board's human rights advisor to PSNI Operational Support dated 23 July 2008.

21. Letter PSNI Operational Support to Policing Board's human rights advisor dated 18 August 2008.

22. 2006 Annual Report, Recommendation 15, p.20.

## REFERENCE TO PSNI POLICIES

In our 2007 Annual Report, we commented that while communicating policies to officers by way of email or via the PSNI intranet may be an efficient way to keep officers informed, it would only be truly effective if officers all have ready access to computers and *actually* access and read PSNI policy directives and service procedures. We reported however that PSNI officers do not routinely do this. ACC Operational Support indicated in 2007 that there is no central monitoring of the extent to which emails highlighting new or updated policies are read. The PSNI does not consider that such monitoring would ensure policies are read by officers and that, in any event, more effective monitoring can be conducted by line managers in ensuring policies that are relevant to their staff are read and understood.<sup>23</sup>

In light of our findings in relation to the 2007 audit, we recommended that the PSNI should monitor how police officers access and make reference to PSNI policies and what steps are taken by PSNI Operational Support department to highlight the introduction of new or amended policies to officers.<sup>24</sup>

In February 2008, PSNI Operational Support responded to the Policing Board in relation to this recommendation<sup>25</sup> and once again outlined that police officers are notified of new PSNI policy directives and service procedures by email<sup>26</sup> and can access policies and procedures through the PSNI intranet. Reference was also made to the explanatory notes to Article 1 of the new Code of Ethics 2008 which states that the PSNI has responsibility to keep officers informed of changes to police powers, policies and procedures and that officers themselves have a duty to keep themselves up to date on the basis of the information provided.<sup>27</sup>

I recognise the steps that are taken by PSNI Operational Support to highlight the introduction of new or amended policies to officers and therefore consider Recommendation 7 of our 2007 Annual Report to be implemented in full.

I also agree with PSNI Operational Support's reference to the explanatory notes to the PSNI Code of Ethics 2008. The PSNI does have responsibility to keep officers informed of changes to police powers, policies and procedures and individual officers then have a duty to keep themselves up to date on the basis of the information provided. However, earlier in this chapter I reported my concerns that officers continue to be in the position that they may be referring to policies or procedures on the PSNI intranet that have been cancelled or

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23. Letter from ACC Operational Support to Policing Board's human rights advisors dated 16 April 2007.

24. 2007 Annual Report, Recommendation 7.

25. Letter from ACC Operational Support to Policing Board dated 26 February 2008.

26. When a new policy directive or service procedure is issued, or an existing policy or procedure amended or cancelled, an email is sent by PSNI Publications branch to all PSNI officers and staff or a notification is placed on the homepage of the PSNI intranet.

27. Code of Ethics 2008, Explanatory Notes, pp.17-18.

superseded and that during the course of my monitoring work over the last six months, officers have on a number of occasions provided me with versions of service procedures which are out of date or which have yet to be published. This causes me serious concern.

The PSNI has invested time and resources in completing its internal policy review. There is little satisfaction to be had, however, if officers do not routinely refer to relevant policies, procedures and guidance to inform them of their police powers and duties and guide their conduct. The findings of the PSNI Criminal Justice human rights researchers (which I discuss in chapter 2 of this report) that junior officers are not adequately familiar with their powers reinforce the point. I therefore make the recommendation that the PSNI should provide to the Policing Board evidence of the measures it takes to ensure that reference is made, as a matter of standard practice, to current PSNI policies and procedures in Police College and District training programmes, in operational planning and in supervisor's daily taskings and briefings to officers. Only in this way can the PSNI be satisfied that officers are aware of and regularly refer to the policies, procedures and guidance made available to them.

### **Recommendation 13:**

**The PSNI should provide evidence to the Policing Board of the measures it takes to ensure that reference is made, as a matter of standard practice, to current PSNI policies and procedures in Police College and District training programmes, in operational planning and in supervisor's daily taskings and briefings to officers.**

## **MAKING POLICIES AVAILABLE TO THE PUBLIC**

In our 2007 Annual Report, we reported that our examination of the PSNI website showed that 45 policies were currently available to the public. Since 38 policies were available in 2006, that represented a modest increase.<sup>28</sup> Against that background, we reiterated Recommendation 16 of our 2006 Annual Report that the PSNI should speed up the process of making more of its policies available to the public.<sup>29</sup>

As at 31 August 2008, there were 49 policy directives available to the public. This represents a further modest increase this year. However, it also represents all of the current PSNI policy directives save one. I therefore consider Recommendation

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<sup>28.</sup> Implementing in part Recommendation 11 of our 2005 Annual Report.

<sup>29.</sup> 2007 Annual Report, Recommendation 8.

8 of our 2007 Annual Report, Recommendation 16 of our 2006 Annual Report and Recommendation 11 of our 2005 Annual Report to be implemented in full but the Policing Board will continue to monitor the PSNI's publication of its policies as part of its chapter 14 monitoring work (data protection and freedom of information).

## THE POLICY WRITERS' COURSE

In our 2006 Annual Report, we recommended that the PSNI should make the policy writers' human rights training course compulsory for all PSNI policy writers, forthwith.<sup>30</sup> In 2007, the PSNI accepted our recommendation and indicated that, in future, all policy writers would be required to complete the policy writers' workshop. In our 2007 Annual Report, we reported that the Policing College and PSNI Corporate Development, Policy and Planning had developed a policy writers' workshop. The first workshop was delivered at the end of July 2007.

At the moment, members of the PSNI Operational Support policy review team are delivering workshops to PSNI staff involved in policy writing. These workshops are not mandatory and are provided on an ad hoc request basis. The workshops address the following topics:

- a. definitions of policy and procedure (referring explicitly to the PSNI policy directive on policy and procedure);
- b. human rights awareness and s.75 awareness; and
- c. PSNI policy audit tool template.

I have been informed that members of the PSNI policy review team have to date conducted two or three of these workshops. I welcome the development of the policy writers' workshop by the members of the PSNI policy review team. The workshop covers the core topics necessary to enable PSNI officers and staff to draft policies and procedures that comply with PSNI's policy directive on policy and procedure<sup>31</sup> (itself designed to comply with relevant legislation, including the Human Rights Act 1998) and meets the intention behind Recommendation 18 of our 2006 Annual Report. Nevertheless, it still remains the position that not all PSNI officers and staff who are responsible for drafting PSNI policies and procedures have attended the policy writers' workshop. The PSNI cannot expect officers and staff to draft compliant PSNI policies and procedures without training on drafting methodology.

30. 2006 Annual Report, Recommendation 18, p.21.

31. PD 01/04.

Against this background, I withdraw Recommendation 18 of our 2006 Annual Report and replace it with the recommendation that the PSNI should make the policy writers' workshop mandatory for all PSNI officers and staff who develop, draft or review PSNI policies and procedures. I understand that the PSNI policy directive on policy and procedure is due to be reviewed and revised. Once this process is complete, the PSNI policy writers' workshop should obviously be redesigned to reflect the new policy directive.

**Recommendation 14:**

**The PSNI should make the policy writers' workshop mandatory for all PSNI officers and staff who develop, draft or review PSNI policies and procedures.**

**PSNI POLICY ON RETENTION OF DNA**

In our 2007 Annual Report, we reported on PSNI's policy on the retention of DNA samples and fingerprints. We recorded that the PSNI's policy is based on the statutory framework laid down in the Criminal Justice and Police Act 2001, the Criminal Justice Act 2003 and ACPO guidance.<sup>32</sup> We also reported that in 2004, the House of Lords considered, in two conjoined test cases, whether the retention of DNA samples and fingerprints from individuals who had been arrested but not charged was lawful.<sup>33</sup> One of the cases related to an 11 year old boy. The House of Lords held that retention in such cases was lawful. The discretion given by ACPO guidance to delete records in exceptional circumstances and the purpose for which the information was retained (the prevention or detection of crime, investigation of an offence or conduct of a prosecution) rendered retention justified and proportionate and therefore compatible with the ECHR.

On this basis, in 2007 we advised the Policing Board that, in accordance with the statutory framework and ACPO guidance, the PSNI's policy on the retention of DNA samples and fingerprints was lawful, justified and proportionate and compatible with the ECHR.<sup>34</sup> However, we noted that the decision of the House of Lords had been referred to the Grand Chamber of the European Court of Human Rights and suggested that the Policing Board should return to consider the PSNI's policy on retention of DNA samples and fingerprints following the decision of the Grand Chamber. The decision of the Grand Chamber of the European Court of Human Rights is still awaited. The Policing Board will return to this matter once the Grand Chamber's decision has been delivered.

<sup>32</sup>. ACPO, Retention Guidelines for Nominal Records on the Police National Computer. Incorporating the Step Down Model, March 2006.

<sup>33</sup>. R. v. Chief Constable of South Yorkshire Police (Respondent) ex parte LS (by his mother and litigation friend JB)(FC)(Appellant) and R. v. Chief Constable of South Yorkshire Police (Respondent) ex parte Marper (FC) (Appellant)(Consolidated Appeals) [2004] UKHL 39.

<sup>34</sup>. Policing Board's Human Rights Advisor's Note on PSNI Retention of DNA, October 2006.



# Chapter 4: OPERATIONS

Monitoring the strategy, planning and execution of operations is critical to any overall assessment of the PSNI's compliance with the Human Rights Act 1998. The majority of police operations raise human rights issues. Articles 2 and 3 of the European Convention on Human Rights are engaged in any operation requiring the use of force and Article 8 is engaged in operations involving the use of surveillance.

# 04



## MONITORING OF LIVE OPERATIONS

### Operations targeting anti-social behaviour and youth causing annoyance

In our 2007 Annual Report, we expanded our monitoring of PSNI operations to include smaller scale, routine operations associated with volume crime. To this end, we monitored a live operation in North Belfast District Command Unit (DCU) against anti-social behaviour and youths causing annoyance. Our examination of the operation highlighted the impact of the approach adopted by response officers on the PSNI's relationship with children and young people. We reminded officers that they should deal with children and young people in a way which appropriately reflects their vulnerability and with an awareness of the issues they face and recommended that the PSNI should include reference to the rights, vulnerabilities and issues faced by children and young people in operational briefings relating to anti-social behaviour, youths causing annoyance and other operations involving children and young people.<sup>1</sup>

The PSNI policy on Policing Children and Young People was revised and reissued on 16 May 2008. A new paragraph has been inserted into the section of the policy dealing with crime reduction. Officers are now instructed as follows:

“Prior to the commencement of any operation or engagement of resources to tackle matters relating to anti-social behaviour, youths causing annoyance etc. reference should be made to the rights, vulnerabilities and issues faced by those children and young people potentially involved through operational briefings. Advice should be sought from Community safety staff, Youth Diversion Officers and anti-social behaviour officers.”

In addition, the section of the policy setting out procedures and guidance for officers includes the following instructions under the PSNI's policing with the community strategy:<sup>2</sup>

1. In order to build and maintain positive relationships with and between all children and young people, officers must be visible and accessible where resources and security allow.
2. Communicating important messages to young people is easier and more persuasive if delivered by local neighbourhood officers.

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1. 2007 Annual Report, Recommendation 9.

2. Service delivery; problem solving; partnership; empowerment and accountability.

3. The involvement of children and young people needs to go beyond purely consultation.
4. Engagement with children and young people has clear potential to allow them to have a direct influence on the type of policing for their area. Officers should be careful not to underestimate the influence or advice that young people can bring when asked to solve problems that affect them.

A summary of the UN Convention on the Rights of the Child is attached to the policy as an appendix.

The new paragraph included in the section of the policy dealing with crime reduction is a useful reminder to officers engaged in operations that they should consider the rights and vulnerabilities of children and young people. I have not been able to observe whether this instruction has been implemented into briefings to officers involved in operations relating to anti-social behaviour and youths causing annoyance. I can however report that at public order operational briefings, I have observed Gold, Silver and Bronze Commanders all briefing officers that they should specifically consider the rights and vulnerabilities of children and young people as part of their operational planning and assess the particular impact of the operation on children and young people.

Against this background, I consider Recommendation 9 of our 2007 Annual Report to be implemented in full.

### **Operations targeting unlawful public sexual activity**

Last year, we reported on our after-the-event audit of an operation conducted in 2005 by officers in Coleraine DCU in relation to reported unlawful public sexual activity following concerns raised with us by the Rainbow Project. We reported that we were satisfied from our review of the operational documentation and our meeting with the police officers involved in the operation that human rights considerations were taken into account in the planning of the operation. We also made reference to the detailed policy and deployment log formulated by Coleraine DCU for such operations<sup>3</sup> and recommended that the PSNI should consider adopting this more comprehensive policy and deployment log as its standard operational planning log.<sup>4</sup>

The PSNI indicated in its Programme of Action 2007-2008 that it accepted this recommendation<sup>5</sup> and indicated that PSNI Operational Support would

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3. 2007 Annual Report, chapter 4, p.56.

4. 2007 Annual Report, Recommendation 10.

5. PSNI Programme of Action 2007-2008, p.12.

progress the recommendation as part of its review of the PSNI service procedure on Human Rights and Policing Public Events, which contains existing PSNI templates designed to assist officers to record strategic and tactical decisions during the planning and execution of an operation. In August 2008, PSNI Operational Support informed me that as the Coleraine DCU operation involved authorisations under the Regulation of Investigatory Powers Act 2000 (RIPA), and the log was identified by the Surveillance Commissioner as an example of good practice, the recommendation had been referred to the PSNI Crime Operations Central Authorisation Bureau for further consideration.<sup>6</sup>

It is disappointing that PSNI Operational Support, which is responsible for the development and standardisation of PSNI policy and standard operational documents, was not able to review Coleraine DCU's more comprehensive policy and deployment log over the course of the year and consider whether there was value in adopting this log, or parts thereof, as a template for operational planning. I therefore consider Recommendation 10 of our 2007 Annual Report to remain outstanding. As the recommendation has been passed to PSNI Central Authorisation Bureau (CAB) for further consideration, I will meet with representatives of CAB to discuss this matter and report further in next year's Annual Report.

As part of our after-the-event audit in 2007, we also analysed the PSNI's policy on policing unlawful public sexual activity.<sup>7</sup> The aim of the policy is to provide information to officers to ensure a consistent response to complaints from members of the public about unlawful public sexual activity. We reported that overall, the PSNI's policy comprehensively integrated human rights considerations. We welcomed the PSNI's attempt to guide officers in the arrest and reporting of offenders so as to minimise the interference with their ECHR Article 8 rights. However, we considered that officers should also be provided with some guidance on the steps they should take when effecting an arrest in order to protect the privacy of the suspect where possible. We therefore recommended that the PSNI should consider amending its policy on policing unlawful public sexual activity to include specific guidance to officers on how they can ensure arrest operations are conducted sensitively and with the least interference with ECHR Article 8.<sup>8</sup>

The PSNI has amended its policy on policing unlawful public sexual activity.<sup>9</sup> It was reissued on 19 June 2008 and I have reviewed that policy. The policy states that:

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6. Letter ACC Operational Support to Policing Board's human rights advisor dated 14 August 2008.  
7. General Order No: 19/06 Policing Unlawful Public Sexual Activity.  
8. 2007 Annual Report, Recommendation 11.  
9. SP 19/2006 Policing Unlawful Public Sexual Activity, 19 June 2008.

“the principle of [ECHR] Article 8 is especially important when planning and conducting arrest operations. The consequences of, for example, uniformed officers arresting a suspect at their home in connection with unlawful public sexual activity could be devastating for the suspect and their family... In such circumstances planners and investigators should use arrest powers sensitively and should consider options such as voluntary attendance or pre-arranged meetings where an arrest can take place if necessary. Failure to do so could lead to the inappropriate disclosure of deeply sensitive information which is in no way relevant to the police investigation. Suspects in such cases are presumed innocent until proven guilty and should not be penalised by unnecessary and insensitive disclosure of private information as a result of police action.”<sup>10</sup>

The incorporation of this instruction to officers meets the concerns we recorded last year. I therefore consider Recommendation 11 of our 2007 Annual Report to be implemented in full.

## PSNI STOP AND SEARCH POWERS

This year, due to concerns raised with me by Members of the Policing Board, District Policing Partnerships and others, I have elected to focus in greater detail on the use of stop and search powers by the PSNI. We have historically analysed trends in the use of stop and search powers under both the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) and the Terrorism Act 2000 to evaluate whether the use of these powers appeared in general terms to be appropriate and proportionate. In our 2007 Annual Report we reported some difficulties with making that assessment.<sup>11</sup> We reported that not all DCUs employed a DCU Analyst or used the PSNI Analysis Centre template to monitor the use of stop and search powers and highlighted our concern that this lack of consistency across districts may lead to limited or sporadic monitoring, with the potential that disproportionate use of stop and search powers could go undetected.

In light of the inconsistent approach to monitoring the exercise of powers to stop and search, we concluded that it was difficult to determine whether the powers were used disproportionately.<sup>12</sup> We therefore recommended that the PSNI should take steps to establish an effective method of monitoring the use of stop and search powers across districts.<sup>13</sup> Before I outline the steps that the PSNI has taken to meet this recommendation, I set out the scope of police powers to

10. SP 19/2006 Policing Unlawful Public Sexual Activity, 19 June 2008, s.8(4) (d).

11. 2007 Annual Report, chapter 4, pp.66-67.

12. We therefore considered Recommendation 19 of our 2006 Annual Report to be implemented only in part.

13. 2007 Annual Report, Recommendation 12.

stop and search under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007 and discuss the PSNI's approach to monitoring the use of stop and search powers by its officers.

## Police powers to stop and search

### *Police and Criminal Evidence (Northern Ireland) Order 1989*

Under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), a police officer has the power to stop and search an individual or vehicle (or anything which is in or on the vehicle) in any public place if the officer has reasonable grounds for suspecting that he or she will find stolen or prohibited articles.<sup>14</sup>

A police officer is required before conducting a search to take reasonable steps to inform the individual who is the subject of the search of the following matters:<sup>15</sup>

- a. the police officer's police number and the name of the police station to which he is attached;
- b. the object of the proposed search;
- c. the officer's grounds for proposing to make the search; and
- d. if the officer makes a record of the search, the individual is entitled to a copy of the record if the individual makes such a request within 12 months of the date the search was conducted.

### *Terrorism Act 2000 Section 44*

The Terrorism Act 2000 provides the police with wide powers of stop and search. Part VII of the Terrorism Act 2000 (which applied to Northern Ireland) lapsed at midnight on 31 July 2007. At that time, s.84 (munitions and transmitters) and s.89 (stop and question) of the Terrorism Act 2000 were replaced by s.24 and s.21 respectively of the Justice and Security (Northern Ireland) Act 2007 (see below).

However, s.44 of the Terrorism 2000 Act continues to apply to Northern Ireland. Before the introduction of s.44 of the Terrorism Act 2000, the police could only stop and search individuals if they had reasonable grounds of suspicion and certain criteria were met. That is no longer necessary. Section 44 of the Terrorism

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14. PACE, Article 3.

15. PACE, Articles 4(4) and 5(7)-(9).

Act 2000 allows a police officer to stop a pedestrian or a vehicle in an authorised area and search:

- a. the pedestrian and anything carried by him or her;<sup>16</sup>
- b. the vehicle, the driver and/or the passenger(s) of the vehicle and anything in or on the vehicle or carried by the driver or the passenger(s).<sup>17</sup>

An authorisation to stop and search can only be granted under s.44 by an officer of at least the rank of assistant chief constable on the grounds that such an authorisation is expedient for the prevention of acts of terrorism.<sup>18</sup> The powers conferred are for the purpose of searching for, seizing and detaining articles of a kind which could be used in connection with terrorism.

Clearly, the power to stop and search under s.44 should only be used when there is evidence of a specific terrorist threat. However, such powers can be exercised whether or not the police officer has grounds for suspecting the presence of articles of that kind.

#### *Government review of s.44*

The UK Government is currently conducting a review of all stop and search powers. Part of that exercise has included a Home Office consultation on the efficacy, application and future of s.44 of the Terrorism Act 2000. In July 2008, as part of its Concluding Observations on the UK's sixth periodic report, the UN Human Rights Committee endorsed the Government's general review of stop and search powers and further recommended that the UK Government undertake a specific review of stop and search powers under s.44 of the Terrorism Act 2000.<sup>19</sup>

### **Justice and Security (Northern Ireland) Act 2007**

As I have already noted, at the end of July 2007, s.89 of the Terrorism Act 2000 was replaced by s.21 of the Justice and Security (Northern Ireland) Act 2007 (JSA 2007) and s.84 of the Terrorism Act 2000 was replaced by S.24 of the JSA 2007.<sup>20</sup>

Under s.21 of the JSA 2007, a police officer has the power to stop a person for so long as is necessary to question him to ascertain his identity and movements.<sup>21</sup> The power to stop a person includes the power to stop a vehicle.<sup>22</sup>

16. Terrorism Act 2000, s.44(2).

17. Terrorism Act 2000, s.44(1).

18. Terrorism Act 2000, s.44(3).

19. UN Human Rights Committee Report CCPR/C/GBR/CO/6, 21 July 2008, para.29.

20. Part VII of the Terrorism Act 2000 lapsed from midnight on 31 July 2007. Therefore ss. 84 and 89 of the Terrorism Act 2000 applied until that time and ss. 21 and 24 of the JSA 2007 apply thereafter.

21. JSA 2007, s.21(1).

22. JSA 2007, s.21(5).

Under s.24 of the JSA 2007, a police officer has the following powers:

- a.** to stop and search a person in a public place to ascertain whether the person has munitions<sup>23</sup> or wireless apparatus<sup>24</sup> unlawfully with him or her;
- b.** to search a person who is not in a public place if the officer reasonably suspects the person to have munitions unlawfully with him or her or wireless apparatus;<sup>25</sup>
- c.** to enter and search any premises for the purpose of ascertaining whether there are munitions or wireless apparatus unlawfully on the premises;<sup>26</sup>
- d.** to seize and, if necessary, destroy any munitions in the course of the search.<sup>27</sup>

Unless it is not reasonably practicable, a record must be made of each exercise of a power under ss. 21 and 24 of the JSA 2007.<sup>28</sup>

A police officer also has the power under the JSA 2007 to enter any premises if he considers it necessary in the course of operations for the preservation of the peace or the maintenance of order.<sup>29</sup>

#### *Government review of JSA 2007*

The UK Government is required to appoint a person to conduct a review of the operation of these powers as soon as possible after 31 July 2008 and each year subsequently.<sup>30</sup> The Government's Independent Reviewer of the JSA 2007 is currently in the process of conducting his first review.<sup>31</sup>

### **PSNI approach to stop and search**

In our 2007 Annual Report, we outlined the difference between the PSNI's approach to the exercise of stop and search powers and that adopted by police forces in England and Wales.<sup>32</sup> First, the police in England and Wales employ a more detailed classification system for recording the ethnicity of persons stopped and searched.<sup>33</sup> In contrast, the PSNI's classification is based on five broad categories (but not the same as the five broad categories in England and Wales) and there are no more detailed sub categories. Secondly, the police in England and Wales request persons stopped and searched to self define their own ethnicity and this is recorded whereas the PSNI requires the officer to record only his or her own perception of the person's ethnicity: the person stopped or

**23.** Explosives, firearms and ammunition and anything capable of being used in the manufacture of an explosive, firearm or ammunition: JSA 2007, Schedule 3, s.1(3)(a).

**24.** A scanning receiver or a transmitter (as defined): JSA 2007, Schedule 3, s.1(3)(f).

**25.** JSA 2007, Schedule 3, s.4.

**26.** JSA 2007, Schedule 3, s.2(1).

**27.** Unless it appears that the munitions are being held and will be used lawfully: JSA 2007, Schedule 3, s.5.

**28.** JSA 2007, s.37 and Schedule 3, s.6.

**29.** JSA 2007, s.23(1).

**30.** JSA 2007, ss.40(1) and (2)

**31.** Robert Whalley CB was appointed the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 in May 2008.

**32.** 2007 Annual Report, chapter 4, pp.59-60.

**33.** This system is based on a '16+1' classification system used in the 2001 census. This classification has five broad categories each of which is sub-divided to create 16 sub-categories and a further 'other' category. Where persons decline to give their ethnicity, it may be recorded as 'not stated'.

searched is not requested to give a self-definition. The community and religious background of individuals stopped and/or searched are monitored by the PSNI on the basis of indicators such as the location of the stop or search or, where supplied, the individual's postcode.

In 2007, we reported that we had raised our concern about the divergence in the PSNI's approach with ACC Criminal Justice and were informed that the PSNI had decided to change its classification system for crime recording to reflect the 11 categories in the Northern Ireland Census but that no decision had been made by the PSNI to change its classification systems for crime recording and recording of stops and searches. We suggested that the PSNI should consider aligning its approach to recording ethnicity so that its classification systems for crime recording and recording of stop and search both reflect the 11 categories in the Northern Ireland Census and indicated that we would report further in this year's Annual Report.<sup>34</sup>

The PSNI confirmed in July 2008 its intention to change the ethnic classification system for both crime recording and stop and search to reflect the categories listed in the 2001 Northern Ireland Census. However, the PSNI stated that the changes have not yet been implemented and further consultation will be necessary with criminal justice partners before the new categorisation system is introduced.<sup>35</sup> No justification has been advanced as to why the PSNI should continue to operate such a limited classification system for recording the ethnicity of persons stopped and searched. The length of time which the PSNI has taken to take steps to align its classification system is disappointing. However, it appears that the PSNI is now in the process of drafting new stop and search forms which will reflect the 11 category ethnic classification system. I am informed that the new forms will be introduced by April 2009 and from that time onwards PSNI crime recording and stop and search recording should be "consistent and uniform with the Northern Ireland Census categories".<sup>36</sup> The Policing Board will therefore continue to monitor progress and report further on the introduction of the new stop and search classification system in next year's Human Rights Annual Report.

### PSNI monitoring of stop and search powers

In its recent Concluding Observations on the UK's sixth periodic report on the action taken to meet its obligations under the International Convention on Civil and Political Rights, the UN Human Rights Committee recommended that the UK Government should ensure that stop and search powers are exercised in a non-discriminatory manner.<sup>37</sup> To ensure the proper use of the wide police powers

34. 2007 Annual Report, chapter 4, p.60.

35. Letter ACC Criminal Justice to Policing Board's human rights advisor dated 22 July 2008.

36. Ibid.

37. UN Human Rights Committee Report CCPR/C/GBR/CO/6, 21 July 2008, para.29.



to stop and search contained in PACE, the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007, it is obviously critical that the PSNI develops an effective system of monitoring stop and search powers.

In our 2007 Annual Report, we recommended that the PSNI should take steps to establish an effective method of monitoring the use of stop and search powers across districts.<sup>38</sup> In its Human Rights Programme of Action 2007-2008, the PSNI accepted this recommendation. During the last twelve months, I have been working closely with ACC Urban and ACC Rural in conjunction with the PSNI Analyst Centre, on the development of a new template for analysing DCU statistics on the use of stop and search powers. The new template provides District Commanders with a quarterly statistical report on the use of police powers under PACE, the Terrorism Act 2000 s.44 and ss. 21 and 24 of the Justice and Security (Northern Ireland) Act 2007. The template will provide detailed information on the use of stop and search powers across each respective PSNI district, identifying areas in the district with the highest levels of use of the powers and reasons for use, comparing statistics for use against previous periods and analysing the age, gender and ethnicity profiles of those stopped and searched.

The new template has now been agreed and is due to be introduced for use by districts. I have agreed with the PSNI that the use of the template will be reviewed in six months, with views sought from District Commanders on its usefulness and/or limitations. In addition, the PSNI has agreed to provide me with a set of the quarterly reports produced on the use of stop and search powers for each district.

I would like to record the commitment and effort demonstrated by the PSNI to meeting the concerns we highlighted in our 2007 Annual Report and to devising a template which will allow the use of stop and search powers to be monitored much more effectively across districts. One issue which remains problematic for monitoring the use of stop and search powers is the lack of data in the ethnicity/nationality of persons stopped and searched as a result of the current PSNI classification system. Again, this problem should be largely overcome once the new categorisation system is introduced.

Against that background, I consider Recommendation 12 of our 2007 Annual Report and Recommendation 19 of our 2006 Annual Report to be implemented in full but remind the PSNI of the continuing nature of its obligation to monitor the use of stop and search powers.

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38. 2007 Annual Report, Recommendation 12.

## STOP AND SEARCH STATISTICS 2007/2008

### Overall numbers of stops and searches

Table 1 below sets out the number of persons stopped and searched under Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the Terrorism Act 2000 (TA 2000) and the Justice and Security (Northern Ireland) Act 2007 (JSA 2007) between 1 April 2007 and 31 March 2008. There were a total of 19,119 stops and searches in 2007/2008. This reflects the same level of stops and searches as 2006/2007, when there was an overall total of 19,154 stops and searches conducted.

**Table 1:**

Persons stopped/searched and stopped/questioned under PACE, Terrorism Act 2000 and Justice and Security Act (Northern Ireland) 2007, 1 April 2007-31 March 2008

Legislative Power	Apr-Jun 2007	Jul-Sep 2007	Oct-Dec 2007	Jan-Mar 2008	Totals
PACE	3616 (4023)	3818 (4101)	4243 (4638)	3604 (3412)	15,281 (16,174)
TA 2000 s.44	124 (59)	1112 (233)	722 (412)	1400 (209)	3358 (913)
TA 2000 s.84 (up to July 2007) or JSA 2007 s.24	109 (439)	107 (674)	95 (337)	117 (468)	428 (1918)
TA 2000 s.89 (up to July 2007) or JSA 2007 s.21	16 (283)	14 (269)	14 (145)	8 (365)	52 (1062)

\* ( ) Figures in brackets represent figures for the corresponding period in 2006/2007

When compared to the figures for 2006/2007, the 2007/2008 figures indicate a significant increase in the use of the power to stop and search under s.44 of the Terrorism Act over the period and a significant decrease in the use of stop and search powers under s.84 of the TA 2000/s. 24 of the JSA 2007 and s.89 of the TA 2000/s.21 of the JSA 2007. It is not clear whether this increase and decrease in the use of these stop and search powers directly correlate.

### District use of Terrorism Act 2000 and Justice and Security (Northern Ireland) Act 2007 stop and search Act powers

Tables 2 and 3 below set out the number of persons stopped/searched and stopped/questioned under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007 and the number of persons subsequently arrested by District for the period 1 October 2007 to 31 March 2008.<sup>39</sup> Table 2 indicates a wide variation in use of the powers under the two statutes by PSNI districts over the six month period. Particularly marked is the use of s.44 of the Terrorism Act 2000. Table 3 demonstrates the very low number of arrests following the use of stop and search powers under both the Terrorism Act 2000 and the Justice and Security Act 2007.

#### Table 2:

Number of persons stopped/searched and stopped/questioned under the Terrorism Act 2000 and Justice and Security (Northern Ireland) Act 2007 by District, 1 October 2007-31 March 2008

District	Legislative power to stop/search or stop/question		
	TA 2000 s.44	JSA 2007 s.24	JSA 2007 s.21
A District	152	25	0
B District	632	58	0
C District	17	1	0
D District	559	35	0
E District	196	48	11
F District	95	17	8
G District	370	25	3
H District	101	3	0
<b>TOTAL</b>	<b>2122</b>	<b>212</b>	<b>22</b>

39. Statistics for districts for were not available for the period 1 April 2007 - 30 September 2007.

**Table 3:**

Number of persons arrested following use of stop/search or stop/question powers under PACE, Terrorism Act 2000 and Justice and Security (Northern Ireland) Act 2007 by District, 1 October 2007-31 March 2008

District	No. of arrests under particular TA 2000 s.44 or JSA 2007		
	TA 2000 s.44	JSA 2007 s.24	JSA 2007 s.21
A District	11	3	0
B District	6	0	0
C District	0	0	0
D District	6	0	0
E District	1	3	0
F District	2	0	0
G District	1	0	0
H District	1	0	0
<b>TOTAL</b>	<b>28</b>	<b>6</b>	<b>0</b>

In his 2007 report on the operation of the Terrorism Act 2000, Lord Carlile, the UK Government's independent reviewer of terrorist legislation, repeated his firm view that terrorism related powers should be used only for terrorism related purposes; otherwise their credibility is severely undermined and the damage to community relations can be considerable.<sup>40</sup>

For the past three years, in his analysis of the use of s.44 of the Terrorism Act 2000 in England and Wales, Lord Carlile has commented that he finds it difficult to understand why s.44 authorisations are perceived to be needed in some force areas, and in relation to some sites, but not others with strikingly similar risk profiles:<sup>41</sup>

"it is clear to me that *section 44* is used by some forces without consideration, and that in future authorisations should be examined more critically...Where other stop and search powers are adequate to meet need, there is no need to apply for or to approve the use of the section...I am sure beyond any doubt that section 44 could be used less and expect it to be used less. There is little or no evidence that the use of section 44 has the potential to prevent an act of terrorism as compared with other statutory powers of stop and search."<sup>42</sup>

40. Lord Carlile Report on the Operation in 2007 of the Terrorism Act 2000, June 2008 (Lord Carlile 2008 Report), para.121.

41. Lord Carlile 2008 Report, para.127.

42. Lord Carlile Report on the Operation in 2007 of the Terrorism Act 2000, June 2008, para.s 128-130.

No conclusions can be reached on the basis of the 2006-2008 statistics on the use of s.44 powers of stop and search by the PSNI. However, given the general concern about the increased use of powers under s.44 by police forces across the UK, I make the recommendation that the PSNI should analyse its figures for stop and search for the period 2006-2008 to ascertain the reasons for the substantial increase in the use of police powers under s.44 of the Terrorism Act 2000 and the substantial decrease in the use of police powers under s.84 of the Terrorism Act 2000, now replaced by s.24 of the Justice and Security (Northern Ireland) Act 2007, and s.89 of the Terrorism Act 2000, now replaced by s.21 of the Justice and Security (Northern Ireland) Act 2007, to ensure that all such powers used are justified, necessary and proportionate.

**Recommendation 15:**

**The PSNI should analyse its figures for stop and search for the period 2006-2008 to ascertain the reasons for the substantial increase in the use of police powers under s.44 of the Terrorism Act 2000 and the substantial decrease in the use of police powers under s.84 of the Terrorism Act 2000, now replaced by s.24 of the Justice and Security (Northern Ireland) Act 2007, and s.89 of the Terrorism Act 2000, now replaced by s.21 of the Justice and Security (Northern Ireland) Act 2007, to ensure that all such powers used are justified, necessary and proportionate.**

**Gender and Ethnic Profiles of those stopped and searched**

Tables 4 and 5 below set out the number of persons stopped under PACE, the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007 by gender and ethnicity respectively for the period 1 April 2007 to 31 March 2008. In line with 2006/2007, the tables demonstrate that the vast majority of persons stopped and searched were white males.

**Table 4:**

Persons stopped and searched under PACE and the TA 2000/JSA 2007 by gender, 1 April 2007-31 March 2008

Yearly Quarter 2007/2008	Stop and Search/Stop and Question							
	PACE		TA 2000 s.44		TA 2000 s.84/ JSA 2007 s.24*		TA 2000 s.89/ JSA 2007 s.21*	
	Male	Female	Male	Female	Male	Female	Male	Female
Apr-Jun	3280	336	n/a	n/a	103	6	16	0
Jul-Sep	3428	390	n/a	n/a	100	7	14	0
Oct-Dec	3851	377	651	71	85	10	10	4
Jan-Mar	3301	303	1299	101	98	19	8	0
<b>Total 2007/08</b>	<b>13,860</b>	<b>1,406</b>	<b>1,950</b>	<b>172</b>	<b>386</b>	<b>42</b>	<b>48</b>	<b>4</b>

\* Part VII of the Terrorism Act lapsed from midnight on 31 July 2007. Sections 84 and 89 of the Terrorism Act 2000 were at that time replaced by sections 24 and 21 of the Justice and Security (Northern Ireland) Act 2007 respectively. Sections 84 and 89 of the Terrorism Act 2000 apply up to July 2007 only.

n/a = statistics not available

**Table 5:**

Persons stopped and searched under PACE and the TA 2000/JSA 2007 by ethnicity, 1 April 2007-31 March 2008

Yearly Qu. 07/08	Statutory power to stop/search or stop/question																	
	PACE					TA 2000 s.84/ JSA 2007 s.24*					TA 2000 s.89/ JSA 2007 s.21*							
	Wh.	Ch.	I/S	Tra.	Bl.	Oth.	Wh.	Ch.	I/S	Tra.	Bl.	Oth.	Wh.	Ch.	I/S	Tra.	Bl.	Oth.
Apr-Jun	3527	6	9	24	15	35	108	0	0	1	0	0	16	0	0	0	0	0
%	97.5	0.2	0.2	0.7	0.4	1.0	99.1	0	0	0.9	0	0	100	0	0	0	0	0
Jul-Sep	3748	4	7	17	8	34	104	2	1	0	0	0	14	0	0	0	0	0
%	98.2	0.1	0.2	0.4	0.2	0.9	97.2	1.9	0.9	0	0	0	100	0	0	0	0	0
Oct-Dec	4118	9	9	40	13	25	95	0	0	0	0	0	14	0	0	0	0	0
%#	95.2	0.2	0.2	0.9	0.3	0.6	100	0	0	0	0	0	100	0	0	0	0	0
Jan-Mar	3551	5	3	21	14	10	113	3	0	0	1	0	8	0	0	0	0	0
%	98.5	0.1	0.1	0.6	0.4	0.3	96.5	2.6	0	0	0.9	0	100	0	0	0	0	0
Total	14,944	24	28	102	50	104	420	5	1	1	1	0	52	0	0	0	0	0
%	97.8	0.2	0.2	0.7	0.3	0.7	98.1	1.2	0.2	0.2	0.2	0	100	0	0	0	0	0

\* Part VII of the Terrorism Act lapsed from midnight on 31 July 2007. Sections 84 and 89 of the Terrorism Act 2000 were at that time replaced by sections 24 and 21 of the Justice and Security (Northern Ireland) Act 2007 respectively. Sections 84 and 89 of the Terrorism Act 2000 apply up to July 2007 only.

# Percentages for Oct-Dec do not sum to 100% because categorisation of 'not specified' has been excluded from figures.

**KEY:** Wh. = White Tra. = Irish Traveller  
 Ch. = Chinese Bl. = Black  
 I/S. = Indian Sub-Continent Oth. = Other



In our 2007 Annual Report, we set out the total number of stops and searches according to ethnic group, as a percentage of the population of the ethnic group in Northern Ireland, for the period 1 April 2007 to 31 March 2008. We recognised that the population statistics were somewhat out of date (they were taken from the 2001 Census) but noted that they constituted the most reliable published statistics against which to measure. In our 2007 Annual Report, we reported that the figures for 2006/2007 suggested some disproportionality in the number of stops/searches of the Irish Traveller community. The number of stops and searches conducted against members of the Irish Traveller community in the 2006/2007 annual period corresponded to 12% of the entire Irish Traveller population in Northern Ireland. When compared to the number of stops and searches conducted against white people as a percentage of the entire white population of Northern Ireland, at 1%, or the other ethnic groups, this suggested an increased tendency to stop and search members of the Irish Traveller community.

PSNI Criminal Justice department is currently working with the PSNI Diversity Unit to complete an evaluation of the use of stop and search and its impact on members of the Irish Traveller community<sup>43</sup> and will report further to the Policing Board on the findings and conclusions of the evaluation in due course.

I have not repeated this analysis for 2007/2008 on the ground that the Census figures for 2001 so clearly fail to reflect the new communities that are emerging in Northern Ireland.<sup>44</sup> More valuable comparative data should be available next year following the PSNI's introduction of its new classification system for both crime recording and stop and search.

Table 6 sets out the numbers of stops and searches under PACE<sup>45</sup> which led to arrest against each of the five ethnic groups for the period 1 October 2007 to 31 March 2008 (figures for 1 April to 30 September 2007 were not available).

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43. Letter ACC Criminal Justice to Policing Board's human rights advisor dated 22 July 2008.

44. Including Polish, Lithuanian, Latvian, Russian and Portuguese.

45. The PSNI do not currently record this information for stops and searches under the Terrorism Act.



**Table 6:**

Numbers of stops/searches under PACE leading to arrest according to ethnicity, 1 October 2007-31 March 2008

Ethnicity	No. of persons stopped and searched under PACE	No. of persons arrested	% of searches leading to arrests
White	7669	722	9.4
Chinese	14	1	7.1
Indian Sub-continent	12	1	8.3
Traveller	61	7	11.5
Black	27	5	18.5
Other	35	8	22.9
<b>Total</b>	<b>7818</b>	<b>744</b>	<b>9.5</b>

The table demonstrates that 11.5% of stops and searches under PACE against members of the Irish Traveller community lead to an arrest. This is above the overall average of 9.5% of stops and searches leading to arrest. In our 2007 Annual Report, we noted that whilst this figure was higher in 2006/2007 than the total percentage of stops and searches leading to arrest, it was not as high as to justify the higher than average number of stops and searches against members of the Irish Traveller community. This pattern has been repeated in 2007/2008.

In 2007, we suggested that the PSNI evaluate the increased tendency to stop and search members of the Irish Traveller community. I have already noted that PSNI Criminal Justice is currently working with the PSNI Diversity Unit to complete an evaluation of the use of stop and search and its impact on members of the Irish Traveller community<sup>46</sup> and will report further to the Policing Board on the findings and conclusions of the evaluation in due course.

In Table 7 below, I analyse the number of persons stopped and searched and subsequently arrested under PACE according to the reason for the search for the period 1 April 2007 to 31 March 2008.

46. Letter ACC Criminal Justice to Policing Board's human rights advisor dated 22 July 2008.

**Table 7:**

Number of persons stopped/searched and subsequently arrested under PACE by reason for search, 1 April 2007 -31 March 2008

	2007/2008											
	1 Apr - 30 Jun			1 Jul - 30 Sep			1 Oct - 31 Dec			1 Jan - 31 Mar		
	Searches	Arrests	%	Searches	Arrests	%	Searches	Arrests	%	Searches	Arrests	%
Stolen property	394	52	13.2	436	64	14.7	427	67	15.7	415	75	18.0
Drugs	1628	104	6.4	1844	106	5.7	2082	167	8.0	1890	138	7.3
Firearms etc.	52	2	3.8	63	6	9.5	84	4	4.8	45	6	13.3
Offensive Weapon	220	26	11.8	405	39	9.6	312	46	14.7	272	46	16.9
Going equipped	472	23	4.9	550	45	8.2	614	59	9.6	601	60	10.0
Other	1025	113	11.0	669	118	17.6	992	72	7.3	536	62	11.6
<b>Total persons*</b>	<b>3,616</b>	<b>295</b>	<b>8.2</b>	<b>3,818</b>	<b>359</b>	<b>9.4</b>	<b>4,324</b>	<b>395</b>	<b>9.1</b>	<b>3,604</b>	<b>355</b>	<b>9.9</b>
<b>Total persons* 2006/2007</b>	<b>4,023</b>	<b>329</b>	<b>8.2</b>	<b>4,101</b>	<b>295</b>	<b>7.2</b>	<b>4,638</b>	<b>376</b>	<b>8.1</b>	<b>3,412</b>	<b>314</b>	<b>9.2</b>

\* As a person can be stopped/searched or arrested for more than one reason, the number of stop/searches or arrests by reason does not sum to the total number of persons stopped/searched or arrested.

## INTEGRITY TESTING

Patten Recommendation 81 stated that “police managers should use random checks as a way to monitor the behaviour of their officers in dealings with the public and their integrity.” As a result, the PSNI now conducts intelligence led integrity tests. Integrity tests are not random and are only conducted when reliable information is received which suggests misconduct on the part of an identified police officer. In our 2007 Annual Report, we recorded that we had some reservations concerning the use of PSNI’s integrity tests conducted during the period April 2006 to March 2007.<sup>47</sup>

As part of this year’s monitoring work, I have discussed these reservations with PSNI Professional Standards Department. Integrity tests are one of a number of options considered by officers within Professional Standards when planning a covert investigation into allegations of criminal misconduct of an officer. Depending on the nature of the allegations under investigation and the circumstances of the case, integrity testing may or may not be an appropriate operational option. The Policing Board will continue to monitor the use of integrity tests by the PSNI as part of its annual human rights assessment.

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<sup>47</sup>. 2007 Annual Report, chapter 4, p.69.

# Chapter 5: CODE OF ETHICS

The PSNI Code of Ethics<sup>1</sup> was reissued in 2008. The new Code of Ethics 2008 came into force on 10 March 2008. The Code is based on international human rights standards, including the European Convention on Human Rights, and provides an ethical framework for the decisions, actions and conduct of all PSNI officers. It is a valuable tool to ensure that the PSNI complies with its obligations under the Human Rights Act. Any breach of the Code can give rise to a disciplinary investigation.

# 05

Under the Police (Northern Ireland) Act 2000, the Policing Board is under a duty to assess the effectiveness of the Code<sup>2</sup> and has the power to revise it from time to time.<sup>3</sup> I outline below the review of the Code of Ethics conducted by the Policing Board in 2006 and 2007 and assess the effectiveness of the Code before turning to consider enforcement of the Code.

## REVIEW OF THE CODE OF ETHICS

In our 2007 Annual Report, we reported that the Policing Board had commenced a review of the PSNI Code of Ethics. The Code of Ethics 2008 is now in force. I set out below a summary of the review process.

In early 2006, a Code of Ethics working group was established comprising PSNI and Policing Board representatives, including their respective human rights advisors. In September 2006, the Board launched a 12 week consultation exercise on the Code, asking consultees for their views on the current Code and any amendments which they considered should be made to it. In November 2006, the working group considered the submissions received from stakeholders and interested parties. Amendments were made to the Code of Ethics and accompanying Explanatory Notes.

In January 2007, the Policing Board informed all PSNI officers of its review of the Code of Ethics and sought their views on changes that should be made to its contents. In light of the submissions received by PSNI officers, a number of further amendments were made to the Code. The Explanatory Notes to the Code were expanded to provide more detailed and useful guidance to officers. This draft Code and accompanying Explanatory Notes were considered and agreed by the Policing Board on 22 March 2007.

A second four week period of consultation on the new draft Code commenced in March 2007. At the working group meeting in April 2007, a number of additional issues were raised which required a formal corporate response from PSNI. The draft Code was again amended and the subject of a third four week period of consultation. Final amendments were agreed to the Code and accompanying explanatory notes and the Code of Ethics 2008 was issued to all PSNI police officers in January 2008. The Policing Board formally launched the new Code at Stormont on 6 February 2008. The Code of Ethics 2008 came into effect on 10 March 2008.

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1. The original PSNI Code of Ethics came into force on 14 March 2003.  
2. Police (Northern Ireland) Act 2000, s.3(3)(d)(iv).  
3. Police (Northern Ireland) Act 2000, s.52.

In January 2008, the PSNI distributed a printed copy of the Code of Ethics 2008 to every police officer. Following the launch of the new Code on 6 February 2008, an email was sent by PSNI Criminal Justice department to all PSNI officers and staff informing them that the current Code would be replaced by the Code of Ethics 2008 on 10 March 2008. On 10 March 2008, PSNI Criminal Justice department sent a further email to all PSNI officers and staff notifying them that the Code of Ethics was effective from that date.

## EVIDENCE OF THE EFFECTIVENESS OF THE CODE

Under the Police (Northern Ireland) Act 2000, the Chief Constable is required to take such steps as he considers necessary to ensure that all police officers have read and understood the Code as currently in force and that a record is made and kept of the steps taken in relation to each officer.<sup>4</sup> In our 2007 Annual Report, we reported that PSNI Human Resources, PSNI Corporate Development and the Police College had introduced a series of initiatives to integrate the Code of Ethics into their core work areas to demonstrate and ensure the effectiveness of the Code. We were pleased that the Code of Ethics had been fully integrated into the work of PSNI Professional Standards, incorporated within the new APR system devised by PSNI Human Resources and would shortly be included in all Police College training materials following their revision in line with the findings of the Police College's internal human rights audit. In 2007, however, we were concerned, following our 2007 review of PSNI policies, that integration of the Code of Ethics into PSNI policies, procedures and guidance and referencing of relevant Articles remained patchy. Against this background, we considered Recommendation 21 of our 2006 Annual Report to be implemented in part.

Following the launch of the Code of Ethics 2008, the PSNI has now introduced a number of initiatives to ensure awareness and understanding of the new Code. These include the following:

- a. The new Code was made available electronically on the Policenet. All officers are required to register electronically and declare that they have received, read and understood the Code of Ethics.<sup>5</sup> By 13 May 2008, 76% of officers had declared that they had read and understood the Code. The PSNI is following up on those officers who have not yet made the declaration electronically to complete a paper declaration. A note setting out the key revisions to the Code was sent to all PSNI officers.<sup>6</sup>

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4. Police (Northern Ireland) Act 2000, s.52(8).

5. Email PSNI Criminal Justice department to all PSNI officers and staff dated 10 March 2008.

6. Code of Ethics 2008: Key revisions to the Code.

- b.** An article was placed in PSNI *Callsign* magazine promoting the new Code.
- c.** Several service wide emails were sent providing information on the new Code (see above).
- d.** District trainers will deliver training on the Code of Ethics 2008 as the need arises.

In addition to the steps taken by the PSNI to promote the Code of Ethics 2008, a number of internal mechanisms have now been put in place to ensure the effectiveness of the Code of Ethics. These include the following:

- i.** All misconduct charges are worded to reflect the Code of Ethics.
- ii.** Outcomes of misconduct hearings are reported in PSNI Weekly Orders with reference to the specific Article of the Code which was breached.
- iii.** A specific lesson on the Code of Ethics is delivered to student officers as part of Foundation Training.
- iv.** The PSNI's new supervisors' course includes a specific element on the Code of Ethics.
- v.** All Police College training materials have been audited to ensure the proper incorporation of human rights standards and references to the Code of Ethics.

Against this background, I consider Recommendation 21 of our 2006 Annual Report and Recommendation 20 of our 2005 Annual Report to be implemented in full.

In our 2007 Annual report, we made the additional recommendation that the PSNI should ensure that all new policies, procedures and guidance include relevant references to the Code of Ethics as a matter of standard practice henceforth.<sup>7</sup> In its Programme of Action 2007-2008, the PSNI indicated that it accepted this recommendation. The PSNI policy audit tool now requires policy drafters and reviewers to indicate whether the Code of Ethics has been considered in the creation or revision of the policy.

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7. 2007 Annual Report, Recommendation 14.

I welcome the PSNI's attempt to incorporate consideration of the Code of Ethics within its policy audit process. I consider Recommendation 14 of our 2007 Annual Report to be implemented in full. I am aware that the PSNI policy directive 01/04 is due to be substantively reviewed by PSNI Operational Support in the short term. I suggest that the PSNI use this opportunity to insert an explicit requirement that all officers drafting and revising PSNI policies, procedures and guidance should incorporate relevant references to the Code of Ethics 2008 as a matter of standard practice.

## ENFORCING THE CODE OF ETHICS

### Alleged breaches of the Code

In 2007/2008, the number of alleged breaches<sup>8</sup> of the Code of Ethics increased by 15.7% as compared to 2006/2007, demonstrating an upward trend - in 2006/2007, the PSNI reported a 12% rise in the number of alleged breaches of the Code of Ethics as compared to 2005/2006.<sup>9</sup> The percentage of alleged breaches transferred from the Police Ombudsman also demonstrates an upward trend, increasing from 23% of all alleged breaches in 2005/2006 to 43% of alleged breaches in 2006/2007 to 46% of alleged breaches in 2007/2008.<sup>10</sup>

In our 2007 Annual Report, we concluded that a clear pattern was emerging in respect of breaches of the Code of Ethics, with a high percentage of breaches being breaches of sub-Articles 7.2, 2.2 and 1.5 of the Code. We noted, however, that whether this reflected particular patterns or types of behaviour was unclear because of the fairly wide definition of conduct in these sub-Articles. We therefore recommended that the PSNI carry out further analysis of statistics on breaches of the Code to clarify the patterns or types of behaviour in question.<sup>11</sup> PSNI Professional Standards completed that analysis in August 2008 and has provided me with a copy of the evaluation report. I therefore consider Recommendation 13 of our 2007 Annual Report to be implemented in full. I set out a summary of the findings of the PSNI analysis below.

The Articles of the Code of Ethics most commonly alleged to have been breached in 2007/2008 were Article 7 (integrity), Article 1 (professional duty) and Article 2 (police investigations). The sub-Articles of the Code most commonly alleged to have been breached were sub-Article 7.2 (duty to obey the law and maintain standards of the Code),<sup>12</sup> sub-Article 1.10 (duty not to discredit the PSNI on or off duty),<sup>13</sup> sub-Article 2.2 (duty to conduct investigations in an objective,

8. Allegations categorised by PSNI Professional Standards Department from current misconduct files and files transferred from the Police Ombudsman.

9. PSNI Analysis Centre Report for Professional Standards Department, Examination of Articles of the Code of Ethics that are breached most frequently, 24 August 2008 (PSNI Analysis 2008), p.1.

10. PSNI Analysis 2008, p.1.

11. 2007 Annual Report, Recommendation 13.

12. Article 7.2: Police officers shall, at all times, respect and obey the law and maintain the standards stated in this Code. They shall, to the best of their ability, support their colleagues in the execution of their duties.

13. Article 1.10: Whether on or off duty, police officers shall not behave in a way that is likely to bring discredit upon the Police Service.



fair and thorough manner)<sup>14</sup> and sub-Article 1.5 (duty to obey all lawful orders).<sup>15</sup> This repeats the trend set in 2006/2007. Table 1 below sets out the number of alleged breaches for each of these Articles of the Code of Ethics for 2006/2007 and 2007/2008 respectively.<sup>16</sup>

**Table 1:**

Most commonly alleged breaches of the Code of Ethics, 2006-2008<sup>17</sup>

Code of Ethics Article	Alleged breaches 2006/2007	Alleged breaches 2007/2008
<b>7.2</b>	107	89
<b>1.10</b>	34	65
<b>2.2</b>	63	57
<b>1.5</b>	47	54
<b>Others</b>	185	348
<b>Total</b>	<b>436</b>	<b>613</b>

Sub-Article 7.2 accounted for 83% of all Article 7 alleged breaches in the last three years and 15% of all alleged breaches of the Code in 2007/2008.<sup>18</sup> This is a marked decrease from 2006/2007, when sub-Article 7.2 constituted 25% of all alleged breaches. Sub-Article 7.2 misconduct allegations predominately relate to criminal offences, such as assault, driving with excess alcohol and theft. In 2006/2007, we noted our concern at the number of allegations of perverting the course of justice. In 2007/2008, there were no allegations of perverting the course of justice. In 2007/2008, the number of allegations of driving with excess alcohol continued to fall. That reflects a marked decrease from 2006/2007, when there were 17 such allegations.

Sub-Article 1.10 was the second most common sub-Article of the Code of Ethics alleged to have been breached in 2007/2008, accounting for 11% (65) of all alleged breaches in 2007/2008. This is a change in the trend of the two previous years when the second most common sub-Article of the Code of Ethics alleged to have been breached was sub-Article 2.2 and represents an increase from 8% of all alleged breaches in 2006/2007. Sub-Article 1.10 allegations can include allegations of domestic abuse, threatening behaviour, incivility, excess alcohol and abuse of position. The PSNI has reported that the PSNI’s policy on domestic violence involving police officers and staff came into operation in May 2007. The policy requires all reports of domestic violence involving PSNI officers or staff to be forwarded to Professional Standards and this may account for the increase in alleged breaches of sub-Article 1.10.<sup>19</sup>

14. Article 2.2: Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime. They shall be conducted in an objective, fair and thorough manner in accordance with the law. Police officers shall follow the principle that everyone who is the subject of a criminal investigation shall be presumed innocent until found guilty by a court.

15. Article 1.5: The Police Service is a disciplined body. Unless there is good and sufficient cause to do otherwise, police officers must obey all lawful orders and abide by the provisions of Police Regulations. They shall refrain from carrying out any orders they know, or ought to know, are unlawful. No disciplinary action shall be taken against a police officer who refuses to carry out an unlawful order.

16. PSNI Analysis 2008, p.2.  
 17. PSNI Analysis 2008, p.2.  
 18. PSNI Analysis 2008, p.2.  
 19. PSNI Analysis 2008, p.3.

The third highest number of alleged breaches related to sub-Article 2.2, which accounted for 9% of all alleged breaches. Allegations typically concerned a failure to investigate an incident. Finally, the fourth highest level of alleged breaches was sub-Article 1.5. 37% (20) of the 54 allegations concerned neglect of duty. 17% (9) of allegations concerned firearms. This represents a decrease on last year, when 25% of allegations within sub-Article 1.5 related to firearms.<sup>20</sup>

### Investigations commenced by PSNI Professional Standards

Table 2 below sets out the number of investigations and preliminary inquiries initiated by PSNI Professional Standards in 2006/2007 and 2007/2008 by Article of the Code of Ethics. As the table demonstrates, there were 264 initial investigations commenced in 2007/2008, as compared with 436 commenced in 2006/2007. The largest number of investigations commenced in 2006/2007 related to breaches of Articles 1 and 7. The largest number of investigations commenced in 2007/2008 also related to alleged breaches of Articles 1 and 7.

**Table 2:**

Investigations and preliminary inquiries initiated by PSNI Professional Standards, 2006/2007 and 2007-2008

Article of the Code	Number of initiated investigations	
	2006/2007	2007/2008
Professional duty	112	78
Police Investigations	68	13
Privacy and confidentiality	15	14
Use of Force	16	5
Detained Persons	0	0
Equality	26	6
Integrity	135	118
Property	10	11
Fitness for duty	2	5
Duty of supervisors	0	0
Other	52	14
<b>Total</b>	<b>436</b>	<b>264</b>

20. PSNI Analysis 2008, p.3.

## Results of investigations of alleged breaches

In 2005/2006, 163 completed investigations<sup>21</sup> of alleged breaches of the Code by PSNI Professional Standards resulted in some form of formal or informal sanction, whilst 212 completed investigations of alleged breaches resulted in no (formal or informal) sanction. In 2006/2007, 180 completed investigations of allegations resulted in a formal or informal sanction, with 246 completed investigations of alleged breaches resulting in no sanction. In 2007/2008, of 434 completed investigations of alleged breaches of the Code, 250 resulted in a formal or informal sanction, while 184 completed investigations resulted in no sanction.<sup>22</sup>

## Sanctions for breaches

A formal sanction is one that is imposed by a misconduct panel and includes dismissal from the PSNI, a requirement to resign, a reduction in rank or pay, a fine, reprimand or caution. An informal sanction is less severe and may be directed by PSNI Professional Standards or at the district level, by the DCU Commander. Informal sanctions include Superintendents' Written Warnings, advice and guidance and management discussion.

In Chapter 6, I have analysed completed misconduct investigation outcomes against the relevant Article of the Code of Ethics<sup>23</sup> and I do not repeat that analysis here. The analysis demonstrates that the highest number of formal and informal sanctions was imposed in 2007/2008 for breaches of Article 7 (integrity), Article 1 (professional duty) and Article 2 (police investigations) of the Code of Ethics.

The analysis of the sanctions imposed for breaches of Articles 7.2, 2.2 and 1.5 indicate that the most common sanction for breaches of each of the three sub-Articles in 2007/2008 was advice and guidance.<sup>24</sup> This repeats the trend of 2005/2006 and 2006/2007. The most common sanction for breaches of sub-Article 1.10 was returning the file to be dealt with at district level.<sup>25</sup>

It is important that the PSNI analyses the outcomes of misconduct investigations (formal and informal sanctions) against the Articles of the Code of Ethics in order to ascertain whether any patterns or trends in misconduct can be identified and if so, if remedial action needs to be taken. It is also important that the Policing Board continues to monitor the number and nature of breaches of the Code of Ethics and the disciplinary action taken by the PSNI in relation to them. I therefore

21. Completed investigations are those investigations completed by PSNI Professional Standards in the period 2005/2006 or 2006/2007 or 2007/2008 but not necessarily commenced in the same period.

22. PSNI Professional Standards Reports to the Policing Board for the periods 1 April - 30 September 2007 and 1 October 2007 - 31 March 2008.

23. Chapter 6, Table 12.

24. PSNI Analysis 2008, pp.5-6.

25. I have discussed the operation of this sanction in more detail in chapter 6.

make the recommendation that the PSNI should provide to the Policing Board on a six monthly basis details of the number of breaches of each of the Articles of the Code of Ethics, the types of misconduct causing the breaches and the disciplinary action taken by the PSNI in relation to the breaches.

**Recommendation 16:**

**The PSNI should provide to the Policing Board on a six monthly basis details of the number of breaches of each of the Articles of the Code of Ethics, the nature of the misconduct causing the breaches and the disciplinary action taken by the PSNI in relation to the breaches.**

**Duty of supervisors**

Article 10 of the Code of Ethics 2008 sets out the duties of supervising officers. Article 10.2 requires supervisors to ensure that the officers for whom they have responsibility carry out their duties correctly and to challenge and address any behaviour which may violate the Code of Ethics. Article 10.3 of the Code states that supervisors have the responsibility to secure, promote and maintain PSNI professional standards and integrity through the provision of advice and guidance or other remedial or appropriate action. Supervisors may fail in their duties under Article 10 if they fail to take such action. The Policing Board intends to consider the impact and effectiveness of Article 10 of the Code of Ethics as part of next year's human rights monitoring work.



# Chapter 6: COMPLAINTS, DISCIPLINE AND CIVIL ACTIONS

Complaints, discipline and civil actions against the police provide important information for use in monitoring human rights compliance. Over the last five years, we have reviewed the number and outcome of complaints, disciplinary action and civil actions against the police and considered how they reflect the overall compliance of the PSNI with the Human Rights Act 1998.

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The PSNI provides me, as the Policing Board's human rights advisor, with the following information on a six monthly basis:<sup>1</sup>

- a. Summary details of all cases that resulted in formal disciplinary hearings;
- b. Details of all conduct leading to a Superintendent's Written Warning;
- c. Details of cases where disciplinary proceedings are not commenced or not concluded because the officer in question retires, resigns or otherwise leaves the PSNI;
- d. Details of PSNI Professional Standards' current misconduct investigations and disciplinary action taken as a result of completed investigations;
- e. Details of any action taken by District Commanders under the PSNI tracking and trending policy;
- f. Details of all civil actions taken against the police;
- g. Details of judicial review cases brought against the PSNI and any action taken in response to adverse decisions.

I remind the PSNI of the continuing nature of this obligation to provide the Policing Board with this information. I also received details of the number of officers against whom there has been three or more complaints in a rolling 12 months period from the Office of the Police Ombudsman. In this year's report, like previous years, I have drawn on the information provided by PSNI Professional Standards, together with information from the Police Ombudsman's annual report, to identify and track trends and patterns in complaints, discipline and civil actions against the PSNI. I set out my analysis below.

## NUMBER AND PATTERN OF COMPLAINTS

In the period 2007/2008, 2,970 complaints were made against the police.<sup>2</sup> This represents a 10% decrease in complaints compared with 2006/2007, when 3,249 complaints were made.<sup>3</sup> This is a significant reduction after the development of an upward trend over the previous three years. Overall, there

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1. In compliance with Recommendation 27 of our 2005 Annual Report.  
2. Police Ombudsman Annual Report and Accounts for the year ended 31 March 2008 (Police Ombudsman Annual Report 2008), p.19.  
3. Police Ombudsman Annual Report 2008, p.19.

has been a 17% reduction in complaints received since the Office of the Police Ombudsman was established.

Of the 2,970 complaints received and registered by the Office of the Police Ombudsman in 2007/2008, 1,332 (45%) were referred for formal investigation<sup>4</sup> and the remaining 1,638 (55%) were dealt with by the complaints office.<sup>5</sup> 42% of complaints in 2007/2008 related to the manner in which police conducted criminal investigations, 21% related to arrest and 11% related to traffic incidents.<sup>6</sup>

The number of allegations also decreased in 2007/2008 to 5,220 allegations.<sup>7</sup> There was a small increase in the percentage of allegations relating to oppressive behaviour, although the level remained within the average range recorded over the last five years.<sup>8</sup> In 2007/2008, 35% of complaints related to oppressive behaviour (covering allegations such as assault, intimidation or harassment) as compared to 33 % in 2006/2007.<sup>9</sup> Allegations relating to failure of duty remained relatively stable at 40% of total allegations in 2007/2008, as compared to 39% of total allegations in 2006/2007. Allegations of incivility decreased from 16% in 2006/2007 to 14% in 2007/2008, returning to the downward trend displayed since 2004.<sup>10</sup>

Almost two-fifths of allegations in 2007/2008 (39%) related to incidents occurring in a police station. Allegations arising from incidents on the street or road increased to 30% of allegations in 2007/2008,<sup>11</sup> from 29% in 2006/2007.<sup>12</sup>

The allegations made in the period April 2007 to March 2008 were classified by the Police Ombudsman as set out in Table 1 below.<sup>13</sup>

**Table 1:**  
Allegations against the PSNI, 2007-2008

Allegation type	Allegation sub-type	2007/2008	
		Total	%*
Failure in duty	Detention, treatment and questioning	97	2
	Failure in duty	1,700	33
	Identification procedures	1	0
	Multiple or unspecific breaches which cannot be allocated	2	0

4. Under s.56 of the Police (Northern Ireland) Act 1998.

5. Police Ombudsman Annual Report 2008, p.20.

6. Police Ombudsman Annual Report 2008, p.32.

7. Police Ombudsman Annual Report 2008, p.19.

8. From 37% in 2003-2004, 35% in 2004-2005 and 36% in 2005-2006.

9. Police Ombudsman Annual Report 2008, p.30.

10. Police Ombudsman Annual Report 2008, p.30.

11. Police Ombudsman Annual Report 2007, p.25.

12. Police Ombudsman Annual Report 2008, p.32.

13. Police Ombudsman Annual Report 2008, p.29.



	Other irregularity in procedure	109	2
	Searching of premises and seizure of property	123	2
	Stop and search	37	1
	Tape recording	1	0
	Unknown	0	0
	<b>Sub-total</b>	<b>2,070</b>	<b>40</b>
<b>Incivility</b>	Incivility	703	13
	Sectarian abuse	26	0
	<b>Sub-total</b>	<b>729</b>	<b>14</b>
<b>Malpractice</b>	Corrupt practice	70	1
	Irregularity in relation to evidence/perjury	77	1
	Mishandling of property	54	1
	<b>Sub-total</b>	<b>202</b>	<b>4</b>
<b>Oppressive behaviour</b>	Oppressive conduct or harassment	608	12
	Other assault	987	19
	Serious non-sexual assault	25	0
	Sexual assault	25	0
	Unlawful/unnecessary arrest or detention	179	3
	Unknown	0	0
	<b>Sub-total</b>	<b>1,824</b>	<b>35</b>
<b>Homophobia</b>	Homophobia	<b>3</b>	<b>0</b>
<b>Racial discrimination</b>	Racial discriminatory behaviour	<b>20</b>	<b>0</b>
<b>Traffic</b>	Traffic irregularity	<b>66</b>	<b>1</b>
<b>Other</b>	Other	<b>283</b>	<b>5</b>
<b>Section 55 Referral</b>		<b>24</b>	<b>0</b>
	<b>Total 2007/2008</b>	<b>5,220</b>	<b>100</b>
	Total 2006/2007	5589	

\* Figures rounded to nearest percentage point.

## COMPLAINT OUTCOMES 2007/2008

A total number of 3,049 complaints were closed by the Police Ombudsman in 2007/2008. 41% (1,263) were closed on the grounds that they were not substantiated, ill-founded or outside the remit of the Police Ombudsman. 38% of complaints were closed due to the withdrawal of the complaint or the non-cooperation of the complainant. 11% of complaints (332) were informally resolved over the period.<sup>14</sup>

A total of 851 investigations were completed and closed over the period. Of all complaints closed following investigation, 76% (647) were not substantiated due to insufficient evidence, 18% (153) were substantiated with specific action recommended and 6% (51) were substantiated with no further action required.<sup>15</sup>

### Formal disciplinary action

Allegations that police officers have committed criminal offences are referred to the Police Ombudsman.<sup>16</sup> Following investigation by the Police Ombudsman, a file is sent to the Public Prosecution Service for direction as to whether or not a police officer should face criminal charges, or as an interim file. In 2007/2008 the Police Ombudsman submitted 241 cases to the Public Prosecution Service, making no recommendations for prosecution in 221 of those cases. A recommendation for prosecution was made in 11 cases.<sup>17</sup> Interim files were submitted in nine cases. Table 2 below sets out the number of files submitted by the Police Ombudsman to the Public Prosecution Service and recommendations for formal disciplinary action between 2005 and 2008. The table demonstrates that the total number of cases submitted to the Public Prosecution Service has increased in 2007/2008, whilst the number of recommendations to prosecute has remained stable at a total of eleven cases and the number of charges recommended has declined.

14. Police Ombudsman Annual Report 2008, pp.20-21.

15. Police Ombudsman Annual Report 2008, p.21.

16. Professional standards also conducts investigations into suspected criminal misconduct by officers

17. Police Ombudsman Annual Report 2008, p.21.

**Table 2:**

Formal disciplinary action 2005-2007

Outcomes	2005/2006	2006/2007	2007/2008
<b>Files submitted to PPS</b>	174	200	241
PONI recommendation to prosecute	5	11	11
Number of charges	9 <sup>18</sup>	22 <sup>19</sup>	19 <sup>20</sup>
<b>PONI recommendation of PSNI formal disciplinary action</b>	14	8 <sup>21</sup>	11 <sup>22</sup>

**Informal disciplinary action**

Table 3 sets out recommendations by the Police Ombudsman for informal disciplinary action between 2005 and 2008.

**Table 3:**

Informal disciplinary action, 2005-2008

Outcomes	2005/2006	2006/2007	2007/2008
<b>Management discussion</b>	10	29 <sup>23</sup>	38 <sup>24</sup>
<b>Advice and guidance</b>	41 <sup>25</sup>	65 <sup>26</sup>	86 <sup>27</sup>
<b>Superintendents' Written Warning</b>	11 <sup>28</sup>	21 <sup>29</sup>	23 <sup>30</sup>

**Other disposals**

Table 4 sets out all other disposals of complaints for the period 2005-2008.

18. Involving 9 officers.  
 19. Involving 13 officers.  
 20. Involving 12 officers and 19 charges.  
 21. Involving 9 officers.  
 22. Involving 16 officers.  
 23. Involving 24 officers.  
 24. Involving 48 officers.

25. Involving 50 officers.  
 26. Involving 64 officers.  
 27. Involving 111 officers.  
 28. Involving 12 officers.  
 29. Involving 23 officers.  
 30. Involving 25 officers.

**Table 4:**

Other disposals, 2005-2008

Disposal	2005/2006 <sup>31</sup>	2006/2007 <sup>32</sup>	2007/2008 <sup>33</sup>
Informal Resolution	368	405	332
Not Substantiated	532	601	647
Ill-founded	381	395	366
Failure to Co-Operate/ Withdrawal	1,021	1,158	1,138
Outside Remit	388	285	251

Table 4 indicates that of the total number of 3,049 complaints closed by the Police Ombudsman in 2007/2008, 41% of complaints (1,263) were closed on the grounds that they were (i) not substantiated (21%); (ii) ill-founded (12%) or (iii) outside the remit of the Police Ombudsman (8.2%). 37.2% of complaints were closed due to the withdrawal of the complaint by the complainant (9.5%) or the non-co-operation of the complainant (27.8%). These figures reflect no significant discernible difference to the figures for 2006-2007. 11% of complaints (332) were informally resolved over the period.

## COMPLAINTS AGAINST SENIOR OFFICERS

The Conduct of Senior Officers Regulations 2000,<sup>34</sup> require that complaints against officers of Assistant Chief Constable and above are referred to the Policing Board. During 2007/2008, there were four complaints either originated or continuing against senior officers.<sup>35</sup> By August 2008, the status of each of the complaints was as follows. One complaint remained open pending the outcome of an investigation by the Police Ombudsman. One complaint has been the subject of examination by an independent advisor to the Policing Board who concluded that the complaint was incorrectly defined as a complaint against a senior officer. One complaint was closed on the ground that it was a complaint about PSNI administrative process. One complaint had been withdrawn by the complainant.

## DIRECTION AND CONTROL COMPLAINTS

Direction and control complaints relate to any matter concerning the delivery of police services in a police area and may include operational police policies, organisational decisions, general policing standards and operational management

31. Police Ombudsman website: <http://www.policeombudsman.org/caseoutcomes.cfm>.

32. Ibid.

33. Police Ombudsman Annual Report 2008.

34. Royal Ulster Constabulary (Conduct) (Senior Officer) Regulations 2000, Statutory Rules of Northern Ireland 2000 No. 320.

35. Files held by Policing Board for 2007/2008.

decisions. PSNI Professional Standards has responsibility for discharging the Chief Constable's duty in relation to direction and control complaints. PSNI Professional Standards publishes lessons learnt from any such complaints and submits a bi-annual report to the Policing Board.

During April 2007 to March 2008, the PSNI received 82 complaints in relation to the direction and control of the PSNI. The subject matter of the complaints ranged from the conduct of an arrest or search of property, police response to reports of crime, matters relating to privacy and confidentiality, police procedure following recovery of stolen property, deployment of police resources and traffic control issues. Of the 82 complaints, the PSNI resolved 47 with the complainant, with an officer at inspector level discussing the issue with the complainant, writing a letter explaining police policy and procedure or issuing an apology where appropriate.<sup>36</sup>

## FORMAL DISCIPLINARY HEARINGS

The PSNI Professional Standards Department (PSD) provides us with summary details of all cases that resulted in a formal disciplinary hearing on a six-monthly basis.<sup>37</sup> We analyse the information for the period April 2007 to March 2008 in Table 5 below. The table records the date of the disciplinary hearing, the allegations dealt with and the result. Each date corresponds to one hearing for one officer. Multiple sanctions reflect multiple charges.

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<sup>36.</sup> PSNI Professional Standards Activity Report, April 2007 to March 2008.

<sup>37.</sup> Discharging its continuing obligation under Recommendation 27(a) of our 2005 Annual Report.

**Table 5:**

Cases resulting in formal disciplinary proceedings, April 2007-March 2008

Date	Type of Allegation	Detail	Outcome
03/04/07	Professional Duty (x2)/ Integrity	Officer failed to appear at 2 misconduct hearings contrary to lawful orders and made false statement that he attended Professional Standards Department	Required to Resign/ Fined £100
05/04/07	Integrity	Conviction perverting course of justice by false statement and driving whilst unfit.	Officer Dismissed
14/04/07	Professional Duty/ Integrity	Officer failed to report the commission of an offence and took measures to prevent its detection.	Required to Resign/ Required to Resign
19/04/07	Professional Duty/ Integrity/ Fitness for Duty (x2)	Failure to wear personal protection weapon (PPW) while on duty/ Driving with excess alcohol/ Drunk on duty and unfit/ Consumption of alcohol on duty.	Reprimand/ Officer Dismissed/ Officer Dismissed/ No sanction
27/04/07	Integrity	Conviction knowingly or recklessly disclosing personal data contrary to Data Protection Act	Fined £938
03/05/07	Integrity	Driving whilst unfit.	Reduction in Pay
08/06/07	Integrity	Officer used abusive language and behaviour to members of public.	Reduction in Pay
12/06/07	Integrity (x2)	Failure to abide by instructions/ Falsifying record.	Fined £500/ Fined £500
13/06/07	Integrity (x3)	Attempting to cancel lawful fixed penalty tickets.	Required to Resign (x3)
27/06/07	Equality/Integrity	Inappropriate language and behaviour and abusive texts to colleagues/ Inappropriate touching of female colleagues.	Dismissed from Service/ Dismissed from Service

31/07/07	Professional Duty (x4)/ Police Investigations (x2)/ Integrity/ Equality/ Property	Failure to properly investigate and making misleading record in notebook/ Failure to update a victim and keep Public Prosecution Service (PPS) informed of relevant information/ Falsely completing records of breath tests/ Inappropriate language to colleagues/ Failure to handle property with care	Caution, Required to Resign (x2) and Dismissed from Service/ Required to Resign (x2)/ Dismissed from Service/ Caution/ Reprimand
01/08/07	Integrity (x3)	Convictions failure to provide specimen; driving with excess alcohol; driving whilst unfit.	Dismissed from Service (x3)
24/08/07	Integrity (x2)/ Professional Duty	Conviction dangerous driving and giving false information of road traffic collision / Misuse of police vehicle	Required to Resign/ Required to Resign/ Fined £300
19/09/07	Integrity	Conviction driving with excess alcohol	Dismissed from Service
25/09/07	Integrity/ Professional Duty	Appearance and acquittal at court of theft and deception/ Behaviour during the above investigation.	Proceedings stayed on submission
28/09/07	Property	Failure to handle and maintain equipment.	Fined £400
03/10/07	Fitness for Duty/ Performance of Duty (x3)	Consuming alcohol whilst on duty/ Failure to perform supervision duty/ Failure to supervise correctly/ Using police vehicle contrary to instructions.	Reduction in Rank/ Reduction in Rank/ Fined £250/ Reprimand
03/10/07	Fitness for Duty/ Professional Duty	Consuming alcohol whilst on duty/ Absenting from place of duty without authority.	Reduction in Pay/ Fined £250
05/10/07	Integrity (x2)/ Professional Duty	Selling cigarettes without payment of duty and refusing to disclose identity of buyer/ Inappropriate use of email.	Reduction in Pay and Fined £200/ Reprimand

09/10/07	Police Investigation	Failure to conduct an objective and thorough investigation.	Caution
11/10/07	Integrity	Conviction driving with excess alcohol.	Required to Resign
12/10/07	Integrity (x2)/ Privacy and Confidentiality	Breach of Data Protection Act/ Failure to keep information private and confidential.	Reprimand and Fined £200/ Reduction in Pay
19/10/07 <sup>38</sup>	Honesty and Integrity/ Performance of Duty	Failure to be honest and open at scene of road traffic collision followed by failure to provide full and accurate facts/ Failure to prevent the road traffic collision.	Required to Resign/ Reduction in Pay
19/10/07 <sup>39</sup>	Honesty and Integrity/ Performance of Duty	Failure to be honest and open at scene of road traffic collision followed by failure to provide full and accurate facts/ Failure to prevent the road traffic collision.	Required to Resign/ Reduction in Pay
26/10/07	Integrity (x2)	Conviction driving with excess alcohol, failure to remain at scene, failure to report dangerous driving and no insurance/ Conviction driving with excess alcohol and mobile phone use while driving.	Required to Resign (x2)
29/10/07	Integrity	Dishonestly amending a Regulation of Investigatory Powers Act (RIPA) application.	Fined £300
29/10/07	Integrity	Conviction failing to provide specimen of breath.	Reduction in Pay
07/11/07	Integrity	Officer left store without paying for item.	Not Guilty

38. The hearing on 19 October concerned 2 officers dealt with jointly.

39. The hearing on 19 October concerned 2 officers dealt with jointly.



08/11/07	Professional Duty (x17)/ Police Investigation (x4)/ Property (x2)	Failure to thoroughly and expeditiously progress investigations and to keep proper records/ Failure to update victims and witnesses/ Failure to handle and maintain property.	Fined (x9) £1000 total/ Reprimand (x14)
09/11/07	Integrity	Driving whilst under the influence of drugs leading to road traffic collision.	Required to Resign
12/11/07	Integrity	Unauthorised viewing of command serial.	Caution
20/11/07	Integrity	Conviction driving with excess alcohol.	Reduction in Pay
29/11/07	Professional Duty/ Integrity/ Property	Failure to complete and maintain notebook/ Making misleading entry in notebook which was submitted to DPP as correct/ Failure to handle and maintain notebook.	Caution/ Fined £100/ Caution
29/11/07	Integrity/ Professional Duty	Failure to support colleagues by refusing to supply identification and behaving in unacceptable manner to colleagues/ Inappropriate behaviour towards member of the public.	Reduction in Pay/ Reduction in Pay <sup>40</sup>
07/12/07	Integrity/ Professional Duty/ Police Investigations	Conversation with supervisor/ Misrepresenting information on police form/ Failure to investigate case which became statute barred.	Fined £884/ Reprimand/ Fined £200
09/01/08	Integrity	Conviction driving with no insurance.	Reprimand
24/01/08	Integrity (x2)	2 offences of forgery and dishonest representation to educational body.	Fined £500/ Reduction in pay
01/02/08	Integrity	Conviction driving with excess alcohol.	Required to Resign

40. The officer appealed from the original penalty requiring him to resign, which was overturned by the Chief Constable.

12/02/08	Privacy and Confidentiality	Officer disclosed unlawfully car ownership details to third party.	Required to Resign
19/02/08	Integrity	Conviction harassment	Reduction in Rank
29/02/08	Performance of Duty	Failure to conduct thorough and diligent investigation.	Reduction in Pay
14/03/08	Professional Duty	Failure to appear at misconduct hearing.	Dismissed from Service
20/03/08	Professional Duty (x5)/ Fitness for Duty	Failure to submit annual leave forms/ Failure to attend for duty.	Fined (x6) £1050 total

The number of allegations resulting in a disciplinary hearing has remained at the same level in 2007/2008.<sup>41</sup> Of 43 allegations, 42 were substantiated, with 17 officers being required to resign or dismissed from the PSNI. In 2006/2007, 10 officers were required to resign or were dismissed. The increase in officers being removed from the PSNI reflects in large part the PSNI's policy of dismissing officers or requiring officers to resign when found guilty of driving with excess alcohol.

In 2007/2008, no allegations involved the use of force or assault on a member of the public, which shows a marked improvement from 2006/2007 when six allegations involved the use of force or assault. There has however been an increase in the number of allegations relating to an officer's failure to properly investigate complaints. This is of concern, particularly where an officer who submitted a false notebook entry to the PPS as an accurate account was fined £100 and received a caution. Without more information, I am unable to comment further but will request information from the PSNI and continue to monitor. Save for that, I am satisfied that the sanctions imposed by the PSNI following formal disciplinary hearings appear adequate and proportionate.

41. With 40 allegations in 2006/2007 and 43 in 2007/2008.

## SUPERINTENDENTS' WRITTEN WARNINGS

The PSNI provides us, again on a six-monthly basis, with redacted details of all Superintendents' Written Warnings issued to officers.<sup>42</sup> In the period April 2007 to March 2008, 103 Superintendents' Written Warnings were issued. This is a reduction from the comparable period last year.<sup>43</sup> Figure 1 below shows the number of Superintendents' Written Warnings according to the relevant Article of the PSNI Code of Ethics breached.

**Figure 1:**

Superintendents' Written Warnings, April 2007-March 2008

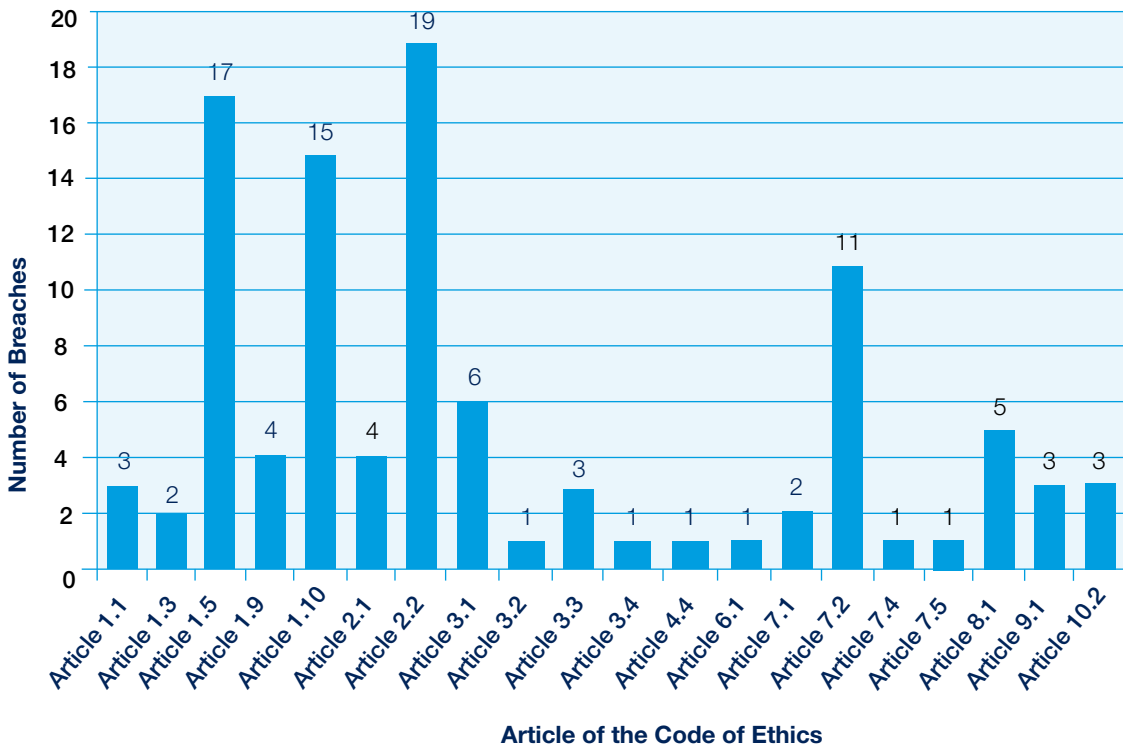


Figure 1 demonstrates that in 2007/2008, the trend for 2005/2006 and 2006/2007 continues. The two Articles of the Code of Ethics most regularly the subject of Superintendents' Written Warnings were Article 2.2 (the duty to conduct investigations in a fair and thorough manner), with 19 breaches over the period and Article 1.5 (the duty to obey all lawful orders and refrain from carrying out unlawful orders), with 17 breaches. This represents, however, a decrease in

42. Discharging its continuing obligation under Recommendation 27(b) of our 2005 Annual Report, p.170.

43. There were 113 Superintendents' Written Warnings in 2006: 2006 Annual Report, chapter 6, p.40

Article 2.2 breaches from 33 in 2006/2007 and a decrease in Article 1.5 breaches from 22 in 2006/2007. In 2007/2008, there has been a marked increase in the number of Superintendents' Written Warnings for breach of Article 1.10 (the duty not to discredit the police force whether on or off duty), with 15 breaches over the period. There has been a slight but noticeable increase in breaches of Article 7.2 (the duty to respect and obey the law), with 11 breaches over the period.

In our 2007 Annual Report, we noted the high number of Superintendents' Written Warnings in relation to Article 1.5 and 2.2 and recommended that the PSNI should investigate the behaviour or conduct resulting in the higher number of Superintendents' Written Warnings under these Articles of the Code of Ethics.<sup>44</sup> The PSNI Professional Standards has conducted that analysis and provided me with a copy of the completed report. I therefore consider Recommendation 15 of our 2007 Annual Report to be implemented in full. I set out a summary of the report below.

The PSNI reported that 55% of all Superintendents' Written Warnings in 2006/2007 were as a result of breaches of Article 1.5 and 2.2 of the Code of Ethics. The analysis identified the categories of incidents in which a Superintendent's Written Warning was given for breaches of Articles 1.5 and 2.2 respectively.<sup>45</sup> Approximately one third of all Superintendents' Written Warnings given as a result of breaches of Article 1.5 (seven of the 22) were as a result of a negligent discharge of a firearm. In all seven cases, a discipline file was created.<sup>46</sup> Table 6 below sets out a breakdown of the Superintendent's Written Warnings given for breaches of Article 1.5 by type of incident. In the two cases of loss of a firearm, the loss resulted from a burglary of the respective officers' homes.

### Table 6:

Number of Superintendents' Written Warnings given for breaches of Article 1.5 of the Code of Ethics by incident type, 2006/2007<sup>47</sup>

Category	Number of SWW	Discipline file created
Negligent discharge	7	7
Loss of firearm	2	2
Loss of ammunition	2	
Vehicle misuse	2	
Acceptable use policy	1	
Failed to carry out lawful order	1	1
Failure to attend court	1	

44. 2007 Annual Report, Recommendation 15.

45. PSNI Report on Recommendation 15, 17 October 2007, p.1.

46. PSNI Report on Recommendation 15, 17 October 2007, p.2.

47. PSNI Report on Recommendation 15, 17 October 2007, p.2.

Failure to attend weapons training	1	
Falsehood	1	
Damage to firearm	1	1
Smoking	1	
Unknown	2	
<b>Total</b>	<b>22</b>	<b>11</b>

Of the 33 Superintendents' Written Warnings given as a result of breaches of Article 2.2 in 2006/2007, 16 were as a result of a failure to investigate, 15 were in relation to timeliness, one related to evidence and one related to a notebook entry.

A Superintendent's Written Warning is the maximum disciplinary sanction that can be imposed on officers at District level. If an officer does not accept a Superintendent's Written Warning, the case is referred to PSNI Professional Standards Department to investigate and a full disciplinary hearing takes place.

I have discussed the use and status of Superintendents' Written Warnings with Professional Standards Department and a number of District and Deputy District Commanders, including PSNI Discipline Champions. There is general agreement that Superintendents' Written Warnings have become diluted in their impact. If an officer admits the misconduct of which he has been accused and accepts a Superintendent's Written Warning, and no further misconduct is recorded in relation to the officer in the subsequent 12 months, the Superintendent's Written Warning is deleted from the officer's personal record. There is concern that some officers do not consider the sanction of Superintendent's Written Warning as serious or significant. In light of this, PSNI Professional Standards Department is currently conducting a review of the system relating to Superintendents' Written Warnings so that adjustments can be made to make the sanction more effective. The Policing Board will monitor the changes introduced.

## TRENDING AND TRACKING OF COMPLAINTS

Patten Recommendations 79 and 80 require the PSNI to adopt an automated trend identification system for complaints and to track this information for management purposes. To comply with these recommendations, the PSNI has adopted a trending and tracking policy.<sup>48</sup> To facilitate the trending of complaints, the Police Ombudsman provides a regular update to District Commanders on the number of allegations of misconduct occurring in their District. Each DCU Commander decides how best to use the information to reduce complaints

<sup>48</sup> General Order No: 42/2006 Trending and tracking of complaints against the police.

in their District. The Police Ombudsman also provides information on the officers in each PSNI District or Department against whom three or more complaints have been made in a twelve month period. Again, each District Commander decides on an appropriate course of action, taking into account the policing environment and the nature of the officer's duties.<sup>49</sup>

### Analysis of trending and tracking of complaints

The PSNI provides the Policing Board with details of action taken by District Commanders under the trending and tracking policy.<sup>50</sup> This policy requires PSNI District Commanders and Department heads to review statistical data about complaints that have been made against officers in their district and consider whether any action should be taken. I have been provided with details of the action taken by District Commanders for the period April 2007 to March 2008. During this period PSNI Professional Standards Department received 94 reports from District Commanders detailing action taken in response to the trending and tracking policy. Eight of the reports indicated that District Commanders would take further action. Of those, one officer received advice and seven officers were monitored for up to three months. In 85 of the 94 reports (90%), District Commanders recommended no further action against officers. In 2006/2007 District Commanders recommended no further action in 61 of 90 reports (68%). This is a significant increase and the Policing Board will continue to monitor trends over the coming year.

The Policing Board is also supplied with information from the Police Ombudsman showing the number of officers in each district who have three or more complaints made against them in any given twelve-month period. Table 7 shows the numbers for each district in the twelve-month period from May 2007 to April 2008.

**Table 7:**

Officers with three or more complaints, May 2007-April 2008

Name of DCU	No of Complaints	3	4 – 7	8 – 11	12 – 15	16 – 20	Total
	No of Officers						
A District <sup>51</sup>	17	20	7				207
B District <sup>52</sup>	14	8	1				87
C District <sup>53</sup>	21	17					140
D District <sup>54</sup>	14	12	2				113
E District <sup>55</sup>	18	16	1				147

49. Generally, an Inspector interviews the officer, highlighting the number of complaints, (without referring to individual complaints) and inviting the officer to comment. Following the interview, the Inspector reports to the DCU Commander to decide on any further action. PSNI Professional Standards and the officer concerned are informed of any further action.

50. Discharging its continuing obligation under Recommendation 27(h) of the 2005 Annual Report.

51. Belfast North and Belfast West.

52. Belfast East and Belfast South.

53. Castlereagh, North Down, Down and Ards.

54. Carrickfergus, Lisburn, Newtownabbey and Antrim.

55. Armagh, Banbridge, Newry and Mourne, and Craigavon.

F District <sup>56</sup>	10	6				69
G District <sup>57</sup>	12	4				57
H District <sup>58</sup>	19	13	1			122
<b>Total</b>	<b>125</b>	<b>96</b>	<b>12</b>	<b>1</b>		<b>942</b>
Total 2006/2007	122	85	8	1	2	900

In our 2007 Annual Report, we recorded a dramatic increase in the total number of complaints against officers with three or more complaints in 2006/2007.<sup>59</sup> From Table 7, it is clear that in 2007/2008, the overall number has remained at the same high levels and has slightly increased. This is a cause of concern. In our 2007 Annual Report, we commented that it was not clear whether the increase in 2006/2007 was as a result of an increased number of officers against whom three or more complaints had been made or as a result of a higher number of officers having a number of multiple complaints made against them. We therefore recommended that the PSNI and the Policing Board investigate the possible causes of this overall increase.<sup>60</sup>

PSNI Professional Standards Department reported to me its difficulty in carrying out this analysis on the ground that sufficient details of the nature or type of complaint is not provided to them by the Police Ombudsman. PSNI Professional Standards met with the Police Ombudsman in May 2008 to discuss this recommendation. The Police Ombudsman explained that such information could not be provided without breaching the duty of confidentiality owed to the complainant.<sup>61</sup> The Police Ombudsman recognised that this created a difficulty for the PSNI but felt unable to comply with the PSNI's request for further detailed information. Instead the Police Ombudsman agreed to undertake further research.<sup>62</sup>

I have been advised that the Police Ombudsman was unable to identify any discernible cause for the increase in the total number of complaints against officers with three or more complaints in 2006/2007, other than speculate that an increase in widespread public disorder could result in an increase in the number of complaints.<sup>63</sup>

In those circumstances, I accept that the PSNI has attempted to implement Recommendation 16 of our 2007 Annual Report but has been prevented from doing so. I therefore withdraw Recommendation 16 and replace it with the new recommendation that PSNI Professional Standards should work with the Police Ombudsman to devise a process to enable a proper analysis of the causes of the increase in the total number of complaints against officers with three or more complaints and provide that analysis to the Policing Board.

56. Cookstown, Dungannon and South Tyrone, Fermanagh and Omagh.

57. Foyle, Limavady, Magherafelt and Strabane.

58. Larne, Ballymena, Ballymoney and Coleraine.

59. From 637 in 2005/2006.

60. 2007 Annual Report, Recommendation 16.

61. It can also be noted that the provisions regarding freedom of information requests do not apply to the Ombudsman but do apply to the PSNI thereby exposing the information to public disclosure.

62. Email Professional Standards to Policing Board's human rights advisor dated 21 August 2008.

63. Email Professional Standards to Policing Board's human rights advisor dated 21 August 2008.

**Recommendation 17:**

**The PSNI Professional Standards Department should work with the Police Ombudsman to devise a process to enable a proper analysis of the causes of the increase in the total number of complaints against officers with three or more complaints and provide that analysis to the Policing Board.**

**REFERRALS TO THE POLICE OMBUDSMAN: THE REGULATION 20 PROCEDURE**

The Police Ombudsman must investigate certain matters referred to him by the Policing Board, the Public Prosecution Service or the Chief Constable.<sup>64</sup> Investigations may include cases where someone has died as a result of the conduct of a police officer and cases involving the discharge of firearms, the firing of Attenuating Energy Projectiles (AEPs) or the use of CS spray. The Police Ombudsman also has a residual power to investigate certain matters, even where there has not been a complaint by a member of the public. Following the Police Ombudsman's investigation, a Regulation 20 report is sent to the Secretary of State, the Policing Board and the Chief Constable. I analyse the Police Ombudsman's Regulation 20 Reports issued between March 2007 and April 2008 below.

**Analysis of Regulation 20 reports, 2007/2008**

12 Regulation 20 reports were issued between March 2007 and April 2008. Table 8 sets out the types and locations of the incidents resulting in Regulation 20 reports for the period. Due to the time lag between the incident and the publication of the report, the reports relate to incidents occurring between 28 October 1993 and 3 November 2006.

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<sup>64</sup>. Police (Northern Ireland) Act 1998, s.55.



**Table 8:**

Types and locations of incidents and number of referrals resulting in a Regulation 20 report, March 2007-April 2008.

Incident	Referral	Location
Discharge of CS spray	1	Londonderry
Assault by police officer	1	Londonderry
Discharge of firearm	4	Belfast/Dungannon/Londonderry (x2)
Mishandling Evidence	1	Strandtown
Fatal Road Traffic Collision	1	Belfast
Use of Force	1	Belfast
Failure of Duty/ Missing Person	1	Londonderry
Life Threatening Injuries	1	Londonderry
Collusion and failure to investigate	1	Londonderry

During the period March 2007 to April 2008, of the 12 Regulation 20 reports issued by the Police Ombudsman, one of those reports related to the discharge of CS spray unlike 2006/2007 when 19 of 25 reports related to the discharge of CS spray.<sup>65</sup> Four reports were concerned with the discharge of a firearm, one report involved the use of force, one related to the mishandling of taped interviews and one case concerned PSNI procedure for responding to missing person reports. There were no reports relating to the discharge of Attenuating Energy Projectiles (AEPs) or to deaths following a pursuit. One case however, related to a fatal road traffic collision when a pedestrian was hit by a land rover. One report related to an assault by a police officer. Another report related to an incident in which a member of the public suffered a life threatening injury. Lastly, one report related to alleged collusion between the security forces and paramilitaries.

In the single report relating to the discharge of CS spray, the Police Ombudsman found the use of CS spray to be necessary, proportionate and justified in the circumstances. In the first of four reports related to the discharge of a firearm, the Police Ombudsman recommended that the officer receive a Superintendent's Written Warning and undertake re-training. The Police Ombudsman also made the more general recommendation that police officers intending to stop vehicles should be required to be in possession of equipment such as high visibility jackets, to clearly disclose their position and identify them as police officers. In the second report, the Police Ombudsman accepted that the firearm had

65. 2007 Annual Report, chapter 6, p.95.

been discharged accidentally but concluded that the accident could have been avoided if the officer had taken appropriate steps to ensure the firearm was made safe immediately after the threat, for which it had been drawn, had subsided. No recommendations were made. In the third and fourth reports, the Police Ombudsman found that the firearms had been discharged in a lawful and justifiable manner to deal with a potentially life-threatening situation. No recommendations were made.

In one case relating to an assault by a police officer in the course of an arrest, the Police Ombudsman concluded that the officer's conduct amounted to an unlawful assault. The Police Ombudsman recorded full support from the PSNI in the course of her investigation but that as the officer had left the jurisdiction, he had not been prosecuted. No recommendations were made.

In the report on the fatal toad traffic collision, in which a pedestrian was struck and killed by a police land rover, the Police Ombudsman found that there were no misconduct issues to address. This was a tragic accident. A recommendation was made, however, that forensic tents should be made more widely available to cover the deceased and avoid the distress that had been caused at the scene.

In another case where serious injuries were sustained during dispersal of a crowd, the Police Ombudsman found that the injuries were sustained accidentally and that no police officer was involved in the accident. No recommendations were made.

In the single case relating to the use of force, a man who was acting aggressively while armed with a machete and a knife was knocked over by a land rover for the purpose of affecting an arrest. The Police Ombudsman found that the use of force was necessary and proportionate in preventing serious injury to members of the public and officers. No recommendations were made.

In the single report relating to the failure of the PSNI to find, and therefore prevent the death of, a vulnerable man who had gone missing from hospital, the Police Ombudsman exonerated the police from any responsibility for his death, finding that officers had treated him as high risk and made efforts to find him. The Police Ombudsman noted that there were procedural irregularities in the completion of forms but recognised that procedures had been reviewed positively and effectively by the PSNI and no further recommendation was necessary.

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One Regulation 20 report related to an allegation of malpractice regarding the obtaining of an interview tape without lawful authority. The Police Ombudsman found that the officers concerned had acted in good faith and in accordance with PSNI practice but that PSNI practice should be reviewed.

One Regulation 20 report concerned an allegation by the father of two murdered men that the security forces had colluded in their murder and thereafter had failed to investigate properly.<sup>66</sup> The Police Ombudsman criticised some aspects of the (then) RUC's handling of crime scene evidence but found no evidence of collusion whatever. The Police Ombudsman considered investigative opportunities were lost in the investigation but there were matters which could be reopened and recommended that the PSNI Historical Enquiries Team undertake a review of the police investigation.

A reduced number of Regulation 20 reports have been issued by the Office of the Police Ombudsman over the last three years. 25 Regulation 20 reports were issued in 2006/2007, 19 of which related to the use of CS Spray. The Police Ombudsman highlighted certain issues relating to PSNI procedures connected with CS Spray.<sup>67</sup> In 2007/2008, only one Regulation 20 report related to the use of CS spray and in that case, the use was deemed necessary and proportionate.

### PSNI responses to Regulation 20 reports

In our 2007 Annual Report, we set out the PSNI's general approach to responding to the Police Ombudsman's Regulation 20 reports. The PSNI has established a review panel to consider the recommendations of the Police Ombudsman's Regulation 20 reports.<sup>68</sup> To date, the Police Ombudsman has not expressed dissatisfaction with the PSNI's response to recommendations arising from Regulation 20 reports, although I report on the Police Ombudsman's policy and practice investigation into the PSNI's response to Regulation 20 reports in more detail below.

The PSNI provides me with a schedule of its responses to the Police Ombudsman's Regulation 20 reports to the Policing Board on a six-monthly basis.<sup>69</sup> I have analysed this information for reports issued in the period March 2007 to April 2008. Again, in light of the time lag between the incident and the publication of the report, it is important to appreciate that the reports cover events between 2002 and 2006. Table 9 sets out the Police Ombudsman's recommendations together with the PSNI's response.

66. The Police Ombudsman issued a statement in respect of the investigation of the complaint by Mr Cairns relating to the murder of his sons in October 1993.

67. Which we considered in detail in chapter 8 of our 2007 Annual Report.

68. The panel consists of representatives from PSNI Operational Support, PSNI Professional Standards department, the Police College and the PSNI human rights legal advisor. A representative from the Policing Board and from the Office of the Police Ombudsman also attends each meeting.

69. Discharging its continuing obligation under Recommendation 25 of our 2005 Annual Report.

**Table 9:**

PSNI's response to Police Ombudsman's Regulation 20 report recommendations, March 2007-April 2008

Issue (No. of instances)	Recommendations	Action
Discharge of a firearm (x4)	That the officer concerned in the complaint should receive a Superintendent's Written Warning (SWW) and undertake re-training/ Officers intending to stop vehicles should be required to be in possession of equipment including high visibility jackets which clearly discloses their position and identifies them as police officers/ No recommendation x3	Officer received SWW and re-training. Officers are supplied with the necessary equipment.
Death of member of the public – fatal RTC (x1)	Forensic tents be made more widely available	Forensic tents are now available in each District Command Unit.
Mishandling of Evidence	PSNI practice to be reviewed.	PSNI practice has been reviewed and guidelines are to be drawn up for use of the three-tape recording system.
Assault by police officer	No recommendations	
Failure of Duty/ Missing Person	No recommendations	
Life Threatening Injuries	No recommendations	
Collusion and failure to investigate	Case to be reviewed by HET	Case referred to HET
Discharge of CS Spray	No recommendations	
Use of Force	No recommendations	

In our 2007 Annual Report, we highlighted that the PSNI had not responded to Regulation 20 reports relating to the discharge of Attenuating Energy Projectiles (AEPs) in North Belfast in August 2005 and the death of female A in Newry in November 2002. We therefore recommended that the PSNI provide evidence of its response to these outstanding regulation 20 reports within three months of the publication of this report.<sup>70</sup> The PSNI provided a detailed and satisfactory written response to me in relation to both of these Regulation 20 reports in December 2007.<sup>71</sup> I therefore consider Recommendation 17 of our 2007 Annual Report to be implemented in full.

70. 2007 Annual Report, Recommendation 17.

71. Letter Deputy Chief Constable to Policing Board's human rights advisor dated 24 December 2007.

## Police Ombudsman investigation of PSNI response to Regulation 20 reports

In our 2007 Annual Report, we noted that the Police Ombudsman had commenced a policy and practice investigation into the PSNI's response to Regulation 20 reports. The Police Ombudsman has now completed that investigation and reported that in the vast majority of instances, any recommendations made by the Police Ombudsman to the PSNI in Regulation 20 reports have been accepted and appropriate amendments made to service policies and procedures.<sup>72</sup>

The Police Ombudsman made two specific recommendations regarding the Regulation 20 procedure as a result of the investigation. The first recommendation was that a Police Ombudsman senior investigator should attend Regulation 20 review panel meetings. That recommendation has been accepted and a Police Ombudsman senior investigator now attends all review meetings. The second was that the review panel should sit every three months to review Regulation 20 reports received and progress made in implementing outstanding recommendations to avoid delays in the PSNI's response. This was noted as a problem in the past. That recommendation has also been accepted and the review panel now meets on a quarterly basis.

## PSNI APPROACH TO SUSPENSIONS, RETIREMENT AND SEVERANCE

In light of the *Hoey* judgment,<sup>73</sup> and concerns raised by members of the Policing Board regarding the suspension, retirement and severance of police officers who are the subject of criminal or disciplinary investigations, as part of this year's monitoring work, I have spent time considering the legislative and policy framework within which the Chief Constable must make decisions regarding suspension of officers<sup>74</sup> and the circumstances where officers may elect to seek severance or retire from the PSNI when criminal or disciplinary investigations are continuing. I have also discussed PSNI policy with senior officers within PSNI Professional Standards Department. I set out the framework below.

72. Report into follow up action taken by police arising from recommendations made by the Police Ombudsman under Reg 20 Royal Ulster Constabulary (Complaints etc.) Regs. 2000, [DARE]

73. *The Queen v. Sean Hoey* [2007] NICC 49.

74. The relevant provisions are contained within the Royal Ulster Constabulary (Conduct) Regulations 2000, S.I. 2000, No. 315 (the Conduct Regulations) and PSNI Policy Directive PD 11/07, Integrity and Professional Standards, 1 August 2007. The Chief Constable must also have regard to the Severance Scheme Handbook.

## Suspension of police officers

### Conduct Regulations

Where there has been a report, allegation or complaint which indicates that the conduct of an officer did not meet the appropriate standard, the Chief Constable<sup>75</sup> has the power to suspend the officer from duty, whether or not the matter has been investigated.<sup>76</sup> This is a discretionary power and the Chief Constable is not required to suspend an officer.

Where there are criminal proceedings outstanding against an officer, disciplinary proceedings must be delayed pending the outcome of the criminal proceedings *unless* the Chief Constable is satisfied that, because of the exceptional circumstances of the case, it would be appropriate to proceed. The Chief Constable retains, however, the power to suspend the officer at any time.<sup>77</sup>

In a small category of special cases, disciplinary proceedings do not have to be delayed and can proceed immediately to a full disciplinary hearing following certification by an ‘appropriate officer’ (an officer of the rank of assistant chief constable or above).<sup>78</sup> Certain conditions<sup>79</sup> must, however, be met:

- a. the report, complaint or allegation indicates that the conduct of the officer is of a serious nature and that an imprisonable offence<sup>80</sup> may have been committed by the officer;
- b. the alleged misconduct is such that, were the case to be referred to a disciplinary hearing and found proven, the sanction likely to be imposed (in the opinion of the appropriate officer) would be dismissal from the PSNI;
- c. the report, complaint or allegation is supported by witness statements, documents or other material which, in the opinion of the appropriate officer, is sufficient without further evidence to establish on the balance of probabilities that the conduct of the officer did not meet the appropriate standard; and
- d. the appropriate officer is of the opinion that it is in the public interest for the officer to cease to be a member of the PSNI without delay.

If these four conditions are satisfied, the appropriate officer shall either certify the case as a special case and refer it to a disciplinary hearing or, if the circumstances are such that in his opinion certification is inappropriate,

75. Or another senior officer acting with delegated authority; Conduct Regulations, Reg. 5(5)). In practice this means the Deputy Chief Constable, in consultation with the head of PSNI Professional Standards, after views have been taken from the District Commander and/or Investigating Officer.

76. Conduct Regulations, Reg.5(1).

77. Conduct Regulations, Reg.6.

78. Conduct Regulations, Reg.39.

79. Conduct Regulations, Schedule 3.

80. An offence which is punishable with imprisonment in the case of a person aged 21 years or over.

he shall return the case to the supervising officer or the Police Ombudsman.<sup>81</sup> To date, the PSNI has classified four cases as special cases. Three of those cases have concluded, one resulting in a requirement to resign and two resulting in dismissals. The fourth case has been referred to a full disciplinary hearing that has yet to be concluded. The Policing Board will continue to monitor the use of this procedure.

### **PSNI policy**

The PSNI Integrity and Professional Standards Policy Directive states that an officer will be suspended only in exceptional circumstances after all other options, including alternative duties, have been considered. The policy states that suspension must not be treated as an indication of guilt or punishment. Rather, it should only be used, in an appropriate case, where it is necessary to protect the integrity of the organisation.<sup>82</sup> The policy states that "...no individual will be suspended from duty unless it is necessary, proportionate and justified".<sup>83</sup>

The policy sets out the factors which the Chief Constable must take into consideration before reaching a decision to suspend. These are as follows:

- (i)** the nature and seriousness of the allegation, including any aggravating or mitigating factors;
- (ii)** the strength of evidence and nature of the investigation;
- (iii)** the interests of both the public and the PSNI;
- (iv)** the effect on public confidence and the reputation of the PSNI;
- (v)** whether the investigation of the allegation would be compromised if the officer remains in his or her current post;<sup>84</sup>
- (vi)** the nature of the current post held by the officer, alternative posts and the potential risk to the public, the officer's colleagues, the officer him/herself or to operations if the officer is not suspended;
- (vii)** the likelihood of a criminal conviction or adverse finding at a disciplinary hearing; and
- (viii)** any impact on PSNI organisational efficiency.

81. Conduct Regulations, Reg.11(3)(b).

82. PSNI Policy Directive PD 11/07, Integrity and Professional Standards, 1 August 2007, Section 7, para.8(1)(c).

83. *Ibid.*, Section 7, para.8(1)(b).

84. As suspension must be the only option available and re-positioning not a realistic alternative.

During a period of suspension an officer cannot exercise any of his/her police powers and may not access police computers. The officer, however, remains subject to the Code of Ethics and Conduct Regulations at all times.<sup>85</sup> The policy requires the Head of Professional Standards Department to review on at least a monthly basis<sup>86</sup> every case where an officer has been suspended. A suspended officer will usually continue to receive his/her full salary. If, however, the officer is detained following a court order or absent without authority and unknown to the Chief Constable, payment will be suspended.

The PSNI policy recognises that the suspension of an officer is a serious matter. As such, the policy requires that suspension must be used only as a last resort and only where the Chief Constable is satisfied that the various prescribed factors are made out. Whatever the nature of the allegation against an officer, the Chief Constable should not suspend the officer unless and until he is satisfied that it is the only and appropriate option. Obviously the more serious the allegation, such as an allegation of perverting the course of justice, the more likely it will be that the factors justifying suspension will be made out. Nevertheless, the Chief Constable must consider the circumstances of each individual case before exercising his discretion.

### Resignation, retirement and medical retirement

The Secretary of State determines the circumstances in which a police officer may retire from the PSNI and may require consent to be obtained from the Chief Constable.<sup>87</sup> PSNI policy<sup>88</sup> states that when an officer is suspended from duty, the officer may not give notice of intention to resign or retire unless the Chief Constable consents.<sup>89</sup> This means that officers who are the subject of serious criminal or disciplinary investigation but who have *not* been suspended from duty may resign at any time. Given the PSNI's policy that an officer will be suspended only in exceptional circumstances after all other options have been considered, this in effect means that most officers who are the subject of serious criminal or disciplinary investigation are free to elect to resign.

Additionally, if an officer's health is such that the officer would normally be retired on medical grounds, misconduct proceedings should not normally prevent or delay retirement *unless* the conduct is very serious and where "it may not be in the public or the Service's interest to proceed with medical retirement".<sup>90</sup>

The Severance Scheme Handbook provides that an officer who is suspended or under serious criminal or disciplinary investigation may not be accepted for voluntary severance without the consent of the Chief Constable.<sup>91</sup>

85. PSNI Policy Directive PD 11/07, Integrity and Professional Standards, 1 August 2007, Section 7, para.s 8(8)(a)-(c).

86. Or when there is any significant change in the circumstances of the case.

87. Police Service of Northern Ireland Regulations 2005 SR 2005 No.547 (2005 Regulations), Reg.14.

88. Which follows Annex C, Determinations Under the Police Service of Northern Ireland Regulations 2005.

89. PSNI Policy Directive PD 11/07, Integrity and Professional Standards, 1 August 2007, Section 7, para.8(12)(a). In practice, applications for consent are dealt with by the Deputy Chief Constable as the Head of Professional Standards: letter PSNI Professional Standards to Policing Board's human rights advisor dated 29 August 2008.

90. PSNI Policy Directive PD 11/07, Integrity and Professional Standards, 1 August 2007, Section 7, para.8(12)(b).

91. Severance Scheme Handbook, paragraph 6(3) and repeated in PSNI Policy Directive PD 11/07, Integrity and Professional Standards, 1 August 2007, Section 7, para.8(12)(c).



### Officers subject to misconduct proceedings retiring or leaving the PSNI

The PSNI provides me 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.<sup>92</sup> I analyse the information for the period 1 April 2007 to 31 March 2008 in Table 10 below. During the period, 20 officers left the PSNI while under investigation. This figure is in addition to those dismissed or required to resign following formal disciplinary proceedings.

#### Table 10:

Allegations made against officers leaving the PSNI and their reason for leaving, 1 April 2007-31 March 2008

Allegation	Reason for leaving
Misconduct in public office	Resigned
Assault x 2	Resigned x 1/ Severance x1
Failure to produce documents	Medical
Driving offences	Resigned
Failure to appear for duty	Resigned
Discrepancy with money	Severance
Damage to vehicle	Resigned
Harassment	Resigned
Theft	Resigned
Drink driving x 4	Severance x 2/ Resigned x 1/ Medical x1
Neglect of files x 2	Retired x1/ Severance x1
Neglect in Investigations x3	Retired x2/ Severance x1

Table 10 indicates that of 19 police officers who left the PSNI with disciplinary proceedings pending, 42% (8) resigned, 33% (6) left on voluntary severance, 10% (2) left on medical grounds and 15% (3) retired. In our 2007 Annual Report, we noted that of 19 officers who left the PSNI in 2006/2007, 47% (9) resigned, 32% (6) retired, 16% (3) left on medical grounds and 5% (1) left on voluntary severance. This shows an increase in the number of officers being permitted to leave on voluntary severance.

<sup>92</sup> Discharging its continuing obligation under Recommendation 27(d) of our 2005 Annual Report.

An officer who is dismissed or required to resign retains his or her pension save in a very limited number of circumstances where the Secretary of State has so certified.<sup>93</sup>

In light of the increase in the number of officers being permitted to resign whilst disciplinary proceedings are pending, I make the recommendation that the PSNI should amend its Integrity and Professional Standards policy so that any officer who is suspended from duty *or* under serious criminal or disciplinary investigation may not give notice of intention to resign or retire unless the Chief Constable consents.

**Recommendation 18:**

**The PSNI should amend its Integrity and Professional Standards policy so that any officer who is suspended from duty *or* under serious criminal or disciplinary investigation may not give notice of intention to resign or retire unless the Chief Constable consents.**

## PSNI INTERNAL DISCIPLINE

The PSNI provides me with information on current internal investigations of misconduct and disciplinary action on a six-monthly basis.<sup>94</sup> The number of investigations of misconduct is correlated to the relevant Article of the Code of Ethics breached. Table 11 sets out this information for the period April 2007 to March 2008.

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<sup>93.</sup> Defined in the Royal Ulster Constabulary Pensions Regulations 1988, SR 1988 No.374.

<sup>94.</sup> Discharging its continuing obligation under Recommendation 27(e) of our 2005 Annual Report. These figures include preliminary inquiries which may not result in a full investigation.

**Table 11:**

Current investigations of misconduct registered by Professional Standards department, April 2007-March 2008<sup>95</sup>

Article of Code of Ethics	Number of cases
Article 1.1	10
Article 1.4	4
Article 1.5	28
Article 1.9	6
Article 1.10	40
Article 2.2	13
Article 3.1	8
Article 3.3	6
Article 4.1	1
Article 4.3	3
Article 4.4	1
Article 6.1	6
Article 7.1	10
Article 7.2	105
Article 7.5	3
Article 8.1	9
Article 8.2	2
Article 9.1	5
Not Applicable <sup>96</sup>	14
<b>Total</b>	<b>274</b>

\* Within some categories an officer may be counted more than once.

The PSNI also provides me with information on completed misconduct investigations.<sup>97</sup> Table 12 sets out the number of completed misconduct investigations according to outcome for the period 1 April 2007 - 31 March 2008.

<sup>95.</sup> Not included in these figures are 263 cases referred from the Police Ombudsman for misconduct proceedings.

<sup>96.</sup> Code of Ethics does not apply.

<sup>97.</sup> These figures also include preliminary inquiries which may not result in a full investigation. A PSNI Professional Standards Department Officer was appointed in 139 of the 434 cases.

**Table 12:**

Completed misconduct investigations, 1 April 2007-31 March 2008

Outcome	Number of Misconduct Investigations*	
	April 2006 – March 2007	April 2007 – March 2008
No further action (NFA)	110	80
Advice and guidance	66	113
Management discussion	36	29
Superintendent's Written Warning	43	52
Returned to DCU	106	76
File to PONI	14	7
Caution	2	2
Reprimand	5	2
Fined	11	7
Reduction in pay	12	10
Required to resign	2	18
Resigned	9	10
Retired	3	3
Medical discharge	3	2
NFA Severance	1	5
Dismissed	1	10
Reduction in rank	2	3
Guidance	n/a	1
Not Guilty	n/a	2
Charge Dismissed	n/a	1
N/A	n/a	1 <sup>98</sup>
<b>Total</b>	<b>426</b>	<b>434</b>

\* The completion category is the highest sanction of each case even if a number of allegations or officers were involved. Within some categories, an officer may be counted a number of times.

As Table 12 demonstrates, in 2007/2008, 18% of misconduct investigations resulted in no further action. Advice and guidance or management discussions were given in 33% of all investigations. Close to 7% of misconduct investigations resulted in the officer being dismissed or required to resign, representing an increase from 3 to 28 investigations resulting in the officer being dismissed or required to resign.

98. Those cases where the Code of Ethics is N/A relate to offences committed before the implementation of the Code of Ethics but completed in the period.

### Cases returned to districts

In 2007, we reported that when 2006/2007 figures are analysed against those relating to 2005/2006, it was clear that there had been a dramatic increase in the number of cases being returned to districts. We noted that whilst this did not necessarily indicate that that was an inappropriate course of action in any of the cases, it was important that both the PSNI and the Policing Board knew what action, if any, was taken at district level.<sup>99</sup> We therefore recommended that the PSNI provide details of all completed misconduct investigations which were returned to the DCU and what action was subsequently taken by DCUs in response.<sup>100</sup>

In 2008, PSNI Professional Standards Department investigated the reason for the increase in completed misconduct investigations being returned to Districts in 2006/2007. PSNI formally responded to me in relation to this recommendation in April 2008.<sup>101</sup> I subsequently met with senior officers within Professional Standards to discuss the recommendation in more detail. I set out below an explanation of the classification system and reasons for the increase in completed misconduct investigations being returned to Districts.

Two sets of misconduct cases may be categorised as 'Returned to District':

- (a) Cases referred back to PSNI Professional Standards by the Police Ombudsman following an investigation which concludes that no further action is required, either because the allegation against the officer has not been substantiated or the Police Ombudsman has made no recommendation for disciplinary action. These cases are marked 'No Further Action' i.e., the Police Ombudsman does not consider that there is any need for disciplinary action to be taken against the officer.
- (b) Cases which, following an investigation, Professional Standards itself concludes require no disciplinary action. These cases are also marked 'No Further Action' i.e., Professional Standards does not consider that there is any need for disciplinary action to be taken against the officer.

These cases all relate to minor breaches of conduct. Both sets of cases are given the categorisation 'Returned to District' because PSNI Professional Standards returns these cases to the District Commander of the police officer

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<sup>99</sup>. 2007 Annual Report, chapter 6.

<sup>100</sup>. 2007 Annual Report, Recommendation 18.

<sup>101</sup>. Letter Deputy Chief Constable to Policing Board's human rights advisor dated 4 April 2008.

who is the subject of the investigation. The District Commander reviews the case and considers whether any informal disciplinary action, such as advice and guidance should be taken, or whether the officer has demonstrated a potential training need. In the vast majority of cases, the District Commander also decides that no further action is required but in a small number of cases, some form of remedial action will be taken. The value of the referral process is that the District Commander becomes informed of the case and is given the discretion to take remedial action should he consider this necessary. If the District Commander subsequently uncovers serious misconduct or a pattern or trend of misbehaviour, then the District Commander must refer the matter back to Professional Standards.

The increase in cases referred back to Districts in 2006/2007, from 13 to 106 cases, can in part be attributed to the increase in the number of cases referred from the Police Ombudsman to Professional Standards marked 'No further Action'. This increase in referral is obviously a positive change given that it indicates an increase in the number of allegations which have either not been substantiated or which the Police Ombudsman does not consider necessitate further disciplinary action. Over 50% of the 106 cases (57) in 2006/2007 related to cases referred from the Police Ombudsman. Of the other 49 cases referred back to District, District Commanders took action in nine cases, recommending advice and guidance on eight occasions and in one case issuing a Superintendent's Written Warning.

I have reviewed a number of these cases and am satisfied that, overall, these cases concern allegations that have either not been adequately substantiated or that relate to minor misconduct issues. Against this background, I consider Recommendation 18 of our 2007 Annual Report to be implemented in full.

In 2007/2008, there has been a decrease in the number of investigations being returned to Districts. In total, 37 misconduct investigations were returned. Professional Standards has reviewed all these cases. In four of the 37 cases, District Commanders took some form of disciplinary action. I have been provided with summaries of each of the four cases by PSNI Professional Standards. I record here the openness and transparency demonstrated by PSNI Professional Standards in relation to this exercise. I am satisfied that the action taken by the District Commander appears to be justified and proportionate. I make the recommendation that PSNI Professional Standards Department should continue to provide summary details of the number and types of misconduct investigations returned to Districts and any disciplinary action taken by District Commanders on an annual basis.

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**Recommendation 19:**

**The PSNI Professional Standards Department should continue to provide summary details of the number and types of misconduct investigations returned to Districts and any disciplinary action taken by District Commanders to the Policing Board on an annual basis.**

**Completed misconduct investigations according to Article of Code breached**

Table 13 correlates the outcomes of completed misconduct investigations against the relevant Article of the Code of Ethics breached for the same period. The sanction recorded is the severest imposed in each case. In some cases, a lesser sanction may also have been imposed.

**Table 13:**

Completed misconduct investigation outcomes correlated against the relevant Article of the Code of Ethics, 1 April 2006-31 March 2008

Offence Result	Integrity		Prof. Duty		P&C		Equality		Police Invest.		Fitness for duty		Detained Persons		Duty of Supervisor		Property		Use of Force		N/A		Total			
	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08		
NFA	43	30	14	21	1		5	2	3	14	1							1	2	2		40	9	110	79	
Caution	2	1		1																				2	2	
Dismissal	1	7		3						1														1	11	
File to PONI	7	1	1	1			1			1								2		2				14	6	
Fined	9	2	1	4					1	1									1					11	9	
M. Discussion	5	4	18	15	1		5		6	7								1				1		36	27	
Medical Discharge	2	2																				1		3	2	
A&G	14	11	20	52		5	5	5	17	29	1		1	3				3	4	4	2	1		66	114	
Reprimand	2	2	1						1															5	2	
Red. In pay	11	9		1					1															12	10	
Resigned	8	8	1	1							2													9	11	
Returned to DCU	17	11	31	25	7		9	1	17	21			4					5	2	2	2	18	3	106	69	
Required to resign		15		3		1	1															1		2	19	
SWW	12	14	16	27	2	5	4		8	3		1							3	1	1			43	54	
NFA Severance	1	1								1										1					1	3
Retired	1			1						2								1						3	3	
Reduction in rank	1	2		1			1																	2	3	
<b>Total</b>	<b>136</b>	<b>113</b>	<b>103</b>	<b>156</b>	<b>11</b>	<b>11</b>	<b>30</b>	<b>9</b>	<b>54</b>	<b>80</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>8</b>	<b>3</b>	<b>3</b>	<b>12</b>	<b>14</b>	<b>12</b>	<b>7</b>	<b>65</b>	<b>12</b>	<b>426</b>	<b>424</b>		

**Key:** Prof. Duty - Professional Duty  
M. Discussion - Management Discussion  
SWW - Superintendents' Written Warning  
NFA Severance - No further action because of Severance  
N/A - Cases occurring before the introduction of the Code of Ethics

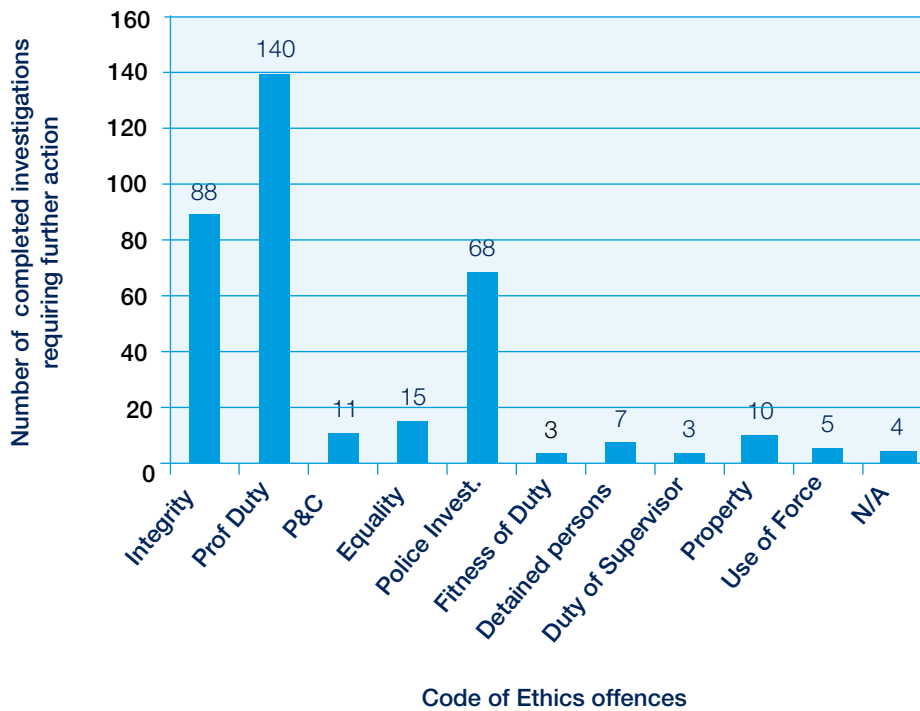
P&C - Privacy and Confidentiality  
A&G - Advice and Guidance  
CNR - Contract not renewed  
NFA - No further action  
Police Invest. - Police Investigations



On the basis of the analysis above, I can compare the number of misconduct investigations resulting in further action with the relevant Code of Ethics offence to indicate the most common types of misconduct by PSNI officers. This information is reproduced in chart form below and shows that failures in integrity, professional duty and police investigations are the most common forms of misconduct.

**Figure 2:**

Investigations into misconduct requiring further action, according to the relevant Code of Ethics offence, 2007/2008



The PSNI provided me with information on the number of officers convicted of criminal offences and the disciplinary action taken in response during 1 April 2007 to 31 March 2008. This information is set out in Table 14 below. In several cases, the outcomes of internal misconduct investigations were pending and therefore we have not been able to report on the disciplinary action taken.

Table 14:

Criminal convictions and disciplinary action, 1 April 2007-31 March 2008

Charge	Result		Penalty		Fined		Disq. driving		Sus. sentence		Imprisonment		Other		Result Disc.Action 2007/2008
	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	
AOABH													2		
Common assault			2								1	1			Suspended pending investigation
Harassment									1	1					Pending Investigation
Non Molestation Order															
Breach Occupation Order															
Excess speed	3	4	1												No further action/ 2 x Superintendent's Warning
Indecent behaviour			2												
Breach occupation order/non molestation order			3								2	2			Suspended pending investigation/ Suspended pending investigation
Theft									1	1				1	Suspended pending investigation/ Resigned
Forgery														2	2 x Reduction in pay
Disorderly behaviour			1												
Excess alcohol				4	17	10									Reduction in pay/ 6 x required to resign/ Dismissed/ Pending investigation
Drunk in charge of car					1										
Drunk in charge of firearm			1												
Unfit to drive					1										
Careless driving	3			1										3	Reduction in pay/ 2 x Superintendent's Warning/ Pending investigation
Dangerous driving			1				3								3 x required to resign
Fail to remain/report/stop			3	3			3								6 x Required to Resign
No driving licence				1			1								Medical Discharge/ Pending investigation
Fail to inform ID of driver					1										
Fail to provide specimen				1	3										Suspended pending investigation
No insurance		2	1	3		2									3 x required to resign/ 1 reprimand/ 1 medical discharge/ 1 pending investigation
No MOT				1											Medical Discharge
Driving using Mobile Phone				1											Required to resign
Data Protection Act infringement			8	1											Pending investigation
Pervert justice								5							
Possession Firearm														1	Severance
Possession Ammunition									1						Suspended pending investigation
False Representation														3	3 x Suspended pending investigation
Possession of Drugs				1											Suspended pending investigation
Driving unaccompanied/no L plates													2		

Table 14 indicates that the most common criminal conviction of PSNI officers in 2007/2008 relates to driving with excess alcohol. The number of convictions however has decreased considerably (41%). Seven of the 10 officers were required to resign or dismissed. The number of Data Protection Act infringements has also decreased considerably.<sup>102</sup> In 2007/2008, there were no convictions recorded for perverting the course of justice.

In our 2007 Annual Report, we highlighted that we were particularly troubled by the five convictions of officers for perverting the course of justice in 2006/2007. We therefore recommended that the PSNI provide additional information to the Policing Board on these cases within three months of this report.<sup>103</sup> I was provided with this information by the Deputy Chief Constable in January 2008.<sup>104</sup> The five convictions related to three officers and two different investigations. In the first case, one officer was convicted of making a false statement and conspiring to pervert the course of justice following a road traffic collision. That officer was dismissed from the PSNI. In the second case, two officers had been involved in a road traffic collision after which they resigned from the PSNI. On a subsequent date, new information was received which gave rise to a criminal investigation for perverting the course of justice arising from the manner in which those two officers conspired to cover the circumstances of the collision.

Against that background, I consider Recommendation 19 of our 2007 Annual Report to be implemented in full.

## PSNI DISCIPLINE CHAMPIONS

In our 2007 Annual Report, we reported on the establishment of the 11 Discipline Champions in each PSNI District and Operational Command Unit. The role of the Discipline Champion is to manage discipline issues within each DCU/OCU and act as a point of central contact for PSNI Professional Standards Department. The Discipline Champions and representatives of PSNI Professional Standards meet on a regular basis throughout the year to discuss particular trends, highlight relevant issues and share good practice. I consider the PSNI's appointment of Discipline Champions to be a constructive attempt to provide a central focus point for discipline matters at district level.

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<sup>102</sup>. However, the number of convictions in 2006/2007 was committed by one officer.

<sup>103</sup>. 2007 Annual Report, Recommendation 19.

<sup>104</sup>. Letter Deputy Chief Constable to Policing Board's human rights advisors dated 21 January 2008.

## CIVIL CLAIMS AGAINST THE PSNI

The PSNI provides the Policing Board with details of civil cases brought against it on a month by month basis. This includes details of the allegation and the outcome. I analyse the information provided for the period April 2007 to March 2008 in Table 15 below. The table includes all claims against the police, including personal injury on duty.

**Table 15:**

Civil cases concluded, April 2007-March 2008

Month	Closed <sup>105</sup>	Won <sup>106</sup>	Lost	Settled	Withdrawn
Apr 07	34	4	1	27	2
May 07	123	15	3	65	40
June 07	123	7		59	57
July 07	52	14	1	26	9
Aug 07	37	24		10	3
Sept 07	30	1	1	25	3
Oct 07	71	6		56	9
Nov 07	46	1	1	27	14
Dec 07	49	3		42	2
Jan 08	60	1	1	52	2
Feb 08	63	5	2	49	5
Mar 08	36	3		27	5
<b>Total</b>	<b>724</b>	<b>84</b>	<b>10</b>	<b>465</b>	<b>151</b>
<b>Total 2006/2007</b>	875	177	7	445	224

Table 16 records the cases concluded each month where compensation was paid to the complainant, either by way of settlement of the case or as ordered by the Court. The table focuses on those areas which most obviously raise human rights issues, such as assault, false imprisonment, trespass, negligence and psychological injury.

<sup>105</sup>. Includes cases passed to another PSNI branch/insurer.

<sup>106</sup>. Includes cases where the PSNI denied liability.

**Table 16:**

Misconduct cases resulting in compensation to the claimant, April 2007-March 2008.

Date	Assault/ Wrongful Arrest	False Imprisonment	Other	Settled	Court Order
Apr 07	4	3	1 (breach of statutory duty) 1 (negligence)	8	
May 07	7 <sup>107</sup>	6		13	
June 07	12	1	1 (negligence) 1 (wrongful prosecution) <sup>108</sup>	21	
July 07	3	3	1 (harassment) 1 (unlawful detention) <sup>109</sup>	6	
Aug 07	2	1		2	
Sept 07	8	5	1 (malicious prosecution)	5	1
Oct 07	7	5		5	
Nov 07	6	5	2 (unlawful detention) 1 (negligence)	7	
Dec 07	1	2	1 (negligence)	3	
Jan 08	1	1		1	
Feb 08	5	2		5	1
Mar 08	1	1	1 (malicious prosecution) 1 (unlawful detention)	3	
<b>Total</b>	<b>63</b>	<b>43</b>	<b>13</b>	<b>79</b>	<b>2</b>
<b>Total 06/07<sup>110</sup></b>	54	44	17	92	3
<b>Total 05/06<sup>111</sup></b>	56	47	4	80	4

Figures do not necessarily reflect the number of cases as more than one claim may be made in a case.

Table 16 indicates a decrease in cases resulting in compensation to the plaintiff. There has been an increase in cases relating to assault and/or wrongful arrest. It should be noted, however, that over 50% of allegations of assault related to three incidents of crowd control.

### Review of civil cases

The PSNI provide the Policing Board with details of its review of all civil cases that are either lost or settled, with a view to bringing disciplinary proceedings where it is appropriate to do on a six monthly basis.<sup>112</sup> In the period April 2007 to March

<sup>107</sup>. In one case the plaintiff alleged assault, trespass to the person and loss of dependency when his father was shot during an arrest operation.

<sup>108</sup>. In this case the plaintiff was prosecuted for failing to produce documents, following which an article appeared in the newspaper. The prosecution was as a result of an administrative error.

<sup>109</sup>. In this case the plaintiff was arrested wrongly after leaving a voluntary interview.

<sup>110</sup>. Figures for 2006/2007 relate to the period April 2006 to March 2007.

<sup>111</sup>. Figures for 2005/2006 relate to the period January 2005 to March 2006.

<sup>112</sup>. Discharging its continuing obligation under Recommendation 31 of our 2005 Annual Report.

2008, PSNI Professional Standards reviewed 88 civil cases, including cases of assault, unlawful detention, negligence, malicious prosecution and plastic baton round injury. Of those, the Police Ombudsman had investigated 57 cases at the time of complaint, the PSNI had investigated 4 at the time of complaint and 25 cases indicated no record of investigation by the PSNI or the Police Ombudsman. None of the cases reviewed by Professional Standards department disclosed new evidence or prompted additional action.<sup>113</sup> I consider Recommendation 20 of our 2007 Annual Report to be implemented in full.

## JUDICIAL REVIEWS

The PSNI provides us 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. The PSNI also informs us of any action taken or proposed in response to any judicial review cases brought against the PSNI.<sup>114</sup> 16 applications for judicial review were lodged against the PSNI in the period 1 January to 31 August 2008. The applications concerned the following issues: PSNI retention of DNA; PSNI decision to arrest and detain; PSNI “necessity” to arrest under the Police and Criminal Evidence (Northern Ireland) Order 1989 and requests for assurances regarding the privacy of solicitor/client consultation in PSNI custody suites. Over 40% of the applications (7) were challenges in relation to PSNI necessity to arrest or PSNI decisions to arrest and detain.

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<sup>113</sup>. PSNI Professional Standards Activity Report, April 2007-March 2008.

<sup>114</sup>. Discharging its continuing obligation under Recommendations 27(f) and (g) of our 2005 Annual Report.



# Chapter 7: PUBLIC ORDER

Public order policing in Northern Ireland raises difficult human rights issues, in particular the need to reconcile the often conflicting rights of different groups of individuals. We analysed these competing rights and the applicable principles for their resolution in our 2005 Annual Report and in our Special Report on the Policing of the Ardoyne Parades 12th July 2005 and the Whiterock Parade 10th September 2005.<sup>1</sup> I do not repeat that analysis here.

# 07



The governing legislation is the Public Processions (Northern Ireland) Act 1998<sup>2</sup> which we analysed in our Special Report on the Policing of the Ardoyne Parades 12th July 2004.<sup>3</sup> That Act 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 individuals or groups may consider the decision in question to be wrong. Where the Parades Commission does not issue a determination in relation to a notified public procession or protest, police powers are governed by the Public Order (Northern Ireland) Order 1987.<sup>4</sup>

For the past five years, as part of the Policing Board's annual human rights compliance assessment, we have audited PSNI public order policies and training and have provided comprehensive reports on the policing operations relating to certain parades and related protests. This year, I have continued to audit PSNI public order policies and training and have again monitored closely the policing operations relating to certain parades and related protests. I report my findings and observations below.

## PUBLIC ORDER TRAINING

In our 2007 Annual Report, we recorded that in both 2005 and 2006, the PSNI carried out extensive training on the Public Processions (Northern Ireland) Act 1998, which incorporated practical scenarios to tackle a number of human rights issues and that similar training was planned in 2007, but subsequently cancelled. We considered that this was regrettable and therefore made the recommendation that in 2008, the PSNI should reinstate public order training on the Public Processions (Northern Ireland) Act 1998.<sup>5</sup>

The PSNI accepted this recommendation. The PSNI human rights legal adviser conducted two one day training programmes on 26 and 27 February 2008 on human rights and public order policing for police officers involved in the operational planning and command of public processions and related protests. I participated in that training. Over 60 officers attended over the two days. The training outlined the legislative framework for parades and protests, relevant human rights standards and principles and key developments in public order case law. The majority of the training programme focused on a number of scenarios requiring officers to apply their knowledge of the legal framework

1. 2005 Annual Report, p.90 and Monitoring the Compliance of the Police Service of Northern Ireland with the Human Rights Act 1998. Report on the Policing of the Ardoyne Parades 12 July 2005 and Whiterock Parade 10 September 2005 (Special Report on the Ardoyne and Whiterock Parades 2005), para.s 11-13.  
2. As amended by the Public Processions (Northern Ireland) (Amendment) Order 2005.

3. Report on the Policing of the Ardoyne Parades 12 July 2004 (Special Report on the Ardoyne Parades 2004), para.s 19-32.  
4. S.I. 1987 No.463.  
5. 2007 Annual Report, Recommendation 21.

and their police powers to practical operational planning. The training materials were incorporated into the Urban Region Gold Command Strategy for 2008.

Against this background, I consider Recommendation 21 of our 2007 Annual Report to be implemented in full.

Following the training, I had discussions with the PSNI human rights legal adviser regarding the frequency of the public order training on the public processions and public order legislation. The vast majority of those officers for whom the training is designed have attended the one day course over the last three years. The PSNI human rights legal adviser suggests that the public order training be held on a bi-annual basis, which would more accurately reflect staff turnover and allow for developments in case law. I see value in this approach. I therefore make the recommendation that the PSNI should conduct public order training on human rights, the public processions legislation and public order legislation on a bi-annual basis, subject to any significant developments or changes in the legal framework, when training should be conducted forthwith.

#### **Recommendation 20:**

**The PSNI should conduct public order training on human rights, public processions legislation and public order legislation on a bi-annual basis, subject to any significant developments or changes in the legal framework when training should be conducted forthwith.**

### **PARADES MONITORING 2007**

In our 2007 Annual Report, we made no recommendations regarding the policing of the Whiterock parade on 30 June, the 12 July Ardoyne parade or the 12 July Springfield Road parade. We found that the strategic, tactical and operational planning of the policing operations was careful and considered and that the human rights of paraders and their supporters, protesters, residents and police officers were taken into account at all stages of the planning processes.

We did, however, highlight two concerns in relation to the parades, one regarding the significant delay in addressing uncertainty around the definition and use of the term 'marshals' in the Parades Commission's determination for the Whiterock parade,<sup>6</sup> the other in relation to the new paragraph included in the Parades Commission's determinations dealing with marshals/stewards.<sup>7</sup> I discuss these further below.

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6. 2007 Annual Report, chapter 7, pp.132-133.

7. 2007 Annual Report, chapter 7, p.141.

### Uncertainty around Parades Commission's determination

In our 2007 Annual Report, we raised concerns about the significant delay in addressing the uncertainty around the definition and use of the term 'marshals' in the Parades Commission's determination for the Whiterock parade. Despite requests being made by the PSNI, some ten days before the Whiterock parade, it was not until the day before the commencement of the parade that the Parades Commission provided clarity around the term. This caused us serious concern. We recorded in our 2007 Annual Report that it is critical for the PSNI and the Parades Commission to work together to ensure that all ambiguities, uncertainties or errors in determinations are identified and remedied as soon as they become apparent, and appropriate clarification and/or correction provided to all interested parties. This provides legal certainty and allows the PSNI to work with parade and protest organisers more effectively to plan appropriate and proportionate policing operations for parades and protests.

### Parades Commission's approach to marshals/stewards

In our 2007 Annual Report, we also recorded concerns around the new paragraph in the Parades Commission's determinations dealing with marshals/stewards. The paragraph does not limit the number of marshals/stewards to individuals named as marshals on the 11/1 (parades notification) or 11/3 (protest notification) and gives both parade and protest organisers wide discretion about the number and identity of marshals and/or stewards. We noted that this may in future cause difficulties. We reported that in a number of its determinations for the 12 July 2007 parade,<sup>8</sup> the Parades Commission had imposed a limit on the *total* number of participants, including marshals and/or stewards within this permitted maximum number and recorded that in some cases, this may be a useful approach.

Following publication of our 2007 Annual Report, we, as the Policing Board's human rights advisors, met with the Chief Executive of the Parades Commission. He acknowledged that difficulties remained around the issue of marshals and/or stewards and indicated that the Parades Commission would be meeting at the end of 2007 to formulate its strategy for 2008 and this would be included as a subject for discussion.

During the last six months, the Policing Board has held a series of meetings with the Parades Commission to discuss these points of concern. The Policing Board's Human Rights and Professional Standards Committee met twice with

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8. The first relating to the Interface Residents Group notified protest and the second, the Highfield and Springfield Residents notified protest.

representatives of the Parades Commission during April and May 2008. The Committee and the Parades Commission engaged in a wide ranging discussion but particular focus was given to the following matters:

- a.** The importance of the Parades Commission responding to the PSNI as a matter of urgency where clarification is sought (whether orally or in writing) regarding any perceived ambiguity, uncertainty, error or omission on the face of a determination.
- b.** The Parades Commission's current approach to marshals/stewards and how the Parades Commission intended to manage the wide discretion given to both parade and protest organisers regarding the number and identity of marshals and/or stewards.

The Parades Commission noted that no issues arose in relation to the vast majority of the 3,900 parades notified to the Parades Commission each year. Of those, a small minority of around 267 (7%) parades are identified each year as contentious or sensitive. Overall, the Parades Commission places restrictions on approximately 56% of those 267 parades.<sup>9</sup>

The Parades Commission acknowledged that any lack of clarity on the face of a determination builds tension in the days before a parade and/or protest and agreed that it is vital for Parades Commission's determinations to be clear and unambiguous. Following the difficulties that arose in relation to the Whiterock parade 2007, the Parades Commission had met with PSNI senior commanders. The Commission and the PSNI agreed that in future, clarity in relation to determinations would be sought - and provided - at the earliest possible moment. The Parades Commission also agreed that the matter of defining and managing marshals/stewards remained critical and that was vital that arrangements for marshalling or stewarding were adequate and clear to all parties.<sup>10</sup>

The Parades Commission has subsequently indicated that much work was undertaken during 2008 by the Parades Commission Secretariat and PSNI District Command Units to achieve a better level of understanding.<sup>11</sup>

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**9.** Parades Commission, Meeting with Policing Board's Human Rights and Professional Standards Committee, 9 April 2008.

**10.** Ibid.

**11.** Letter Parades Commission Chief Executive to the Policing Board's human rights advisor dated 18 September 2008.

## PROSECUTIONS 2007

Due to a number of concerns raised with me by members of the Policing Board, District Policing Partnerships and community organisations regarding the perceived failure to prosecute individuals who breach the public processions legislation, as part of this year's monitoring work I requested information from ACC Urban and ACC Rural and the Public Prosecution Service (PPS) regarding the number of cases submitted by the PSNI in 2007 to the PPS regarding breaches of the public processions legislation and/or public order offences and the number of prosecutions that resulted. I set out this information in Tables 1 and 2.

**Table 1:**

Urban Region Parades 2007 - Files referred to PPS.<sup>12</sup>

No. of cases	Misconduct reported	PPS Decision
<b>11 cases:</b> 5: A District 6: B District	8 x breaches of public processions legislation.	<b>5 decisions</b> of 'No prosecution'. <b>3 decisions</b> outstanding.
	3 x disorderly conduct or other criminal activity.	<b>1 prosecution</b> for disorderly behaviour (bound over for 2 years). <b>2 alternative disposals</b> for (i) provocative conduct (informed warning) and (ii) riotous behaviour (youth conference).

<sup>12</sup> Letter ACC Urban to Policing Board's human rights advisor dated 29 April 2008.

**Table 2:**Rural Region Parades 2007 - Files referred to PPS.<sup>13</sup>

No. of cases	Misconduct reported	PPS Decision
25 cases involving <b>39 defendants:</b>	Disorderly behaviour	<b>16 decisions to prosecute:</b> 14 convictions (majority for disorderly behaviour).
1: E District	Riotous behaviour	
0: F District	Assault	2 conditional discharges for obstructing/resisting police.
5: G District	Obstructing/resisting police	
8: H District	Other criminal activity	<b>16 alternative disposals:</b> 14 informed warnings or adult cautions 1 referral to youth conference 1 referral to Youth Diversion Officer
11: OCU		
		<b>6 cases</b> pending or decisions outstanding

Tables 1 and 2 demonstrate that the PSNI submitted a total of 36 files (11 from Urban and 25 from Rural) to the PPS concerning breaches of the public processions legislation and public order offences relating to parades in 2007. To date, 35 individuals have been prosecuted or given alternative diversionary disposals.

The Policing Board's Human Rights and Professional Standards Committee intends to meet with the PPS over the coming months to discuss prosecutions and alternative diversionary disposals imposed for breaches of public processions and public order legislation.

## PARADES MONITORING 2008

I have elected to produce an abridged report of the policing operations relating to the parades and protests which I monitored in 2008. This decision in large part reflects the success of the policing operations over the last three years and the significant commitment senior officers involved in planning and commanding these large scale public order operations have demonstrated to human rights compliance year on year. It is right and proper that I should formally record this in my report this year. As a result of these successes, it is likely that the Policing Board will elect not to monitor policing operations relating to parades and

13. Letter ACC Rural to Policing Board's human rights advisor dated 11 June 2008.

protests in 2009 in the same intensive manner as it has over the past five years. That decision is fitting and reflects the more peaceful - and less contentious - nature of parades and protests. In the event that circumstances change, however, the Policing Board retains the option to return to its more intensive scrutiny of policing operations relating to parades and protests.

### Parades monitored

Like the previous four years, in the course of my work in 2008, I closely monitored the policing of the Whiterock parade held on 28 June 2008, the parades that passed by the Ardoyne shop fronts on 12 July 2008 (the 12 July Ardoyne parades) and the parade that passed along the Springfield Road on 12 July 2008 (the 12 July Springfield Road parade). As noted in our special reports on parades in 2004 and 2005<sup>14</sup> and our previous human rights annual reports, my remit is to consider whether the policing of these parades complied with the requirements of the Human Rights Act 1998. Since it is a fundamental principle of the Human Rights Act that any action taken by the police must be lawful, this raises two further points: (i) whether the PSNI properly policed the determinations made by the Parades Commission 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.

### Level of monitoring

For all of the parades, I once again attended planning meetings and briefings at Gold and Silver level. I examined relevant briefing documents and had access to all intelligence briefings and updates. On the days of the respective parades, I observed the policing operation initially on the ground and subsequently observed events and decision-making in the Gold and Silver Command rooms.

As was the case for 2004, 2005, 2006 and 2007, I was given unrestricted access by the PSNI to all strategic and planning meetings and documents for the parades that I monitored this year. No request for information was refused, nor was any limitation placed on my ability to question senior officers or to observe and monitor the policing operations on the day. No attempt was made to conceal any aspect of the decision-making process from me. I observed decisions being made and implemented in live time as matters developed. If I had encountered any difficulties, again, I would have recorded them here.

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<sup>14</sup> Special Report on the Ardoyne Parades 2004; Special Report on the Ardoyne and Whiterock Parades 2005.

### Strategic and tactical planning

It is important for me to record that PSNI senior command adopted the same strategic, planning and operational processes and procedures for policing the parades and protests in 2008 as they did in 2004, 2005, 2006 and 2007. Like then, Gold Command strategy meetings for parades in the Urban Region were held in May and June. These meetings were attended by all District Commanders, as well as the PSNI human rights legal adviser. I was provided with a copy of the Urban Region Gold Command Strategy for 2008.

Again, like previous years, Silver Command tactical planning meetings for the 28 June and the 12 July policing operations were held in the days leading up to each parade, following issue of the Parades Commission's determinations. The PSNI human rights legal adviser and tactical advisers attended the majority of the Silver Command tactical meetings and gave advice as and when necessary. This is welcome and should be continued.

### PSNI Alcohol Strategy

The PSNI is developing a Northern Ireland wide action plan to tackle the misuse of alcohol.<sup>15</sup> One part of the action plan is tackling the consumption of alcohol at public events. During the summer of 2008, the PSNI worked with Loyal Orders, parade organisers and other partners to tackle underage drinking and street drinking at the most significant parades. A leaflet was prepared for use by PSNI District Command Teams which identified the potential offences committed by persons consuming alcohol during parades.<sup>16</sup> Police officers enforced the public processions legislation and council bye-laws and confiscated large numbers of items of alcohol during parades in 2008.

### Findings and recommendations 2008

It is important to highlight again that I only seek in this report to make general findings on the human rights compliance of the policing operations we monitored in 2008. My remit is to consider whether, *overall*, the operations complied with the requirements of the Human Rights Act 1998 and the PSNI's own policies on policing public order events. Any specific complaints about the conduct of individual police officers during these operations fall within the jurisdiction of the Police Ombudsman.

15. PSNI Gold Alcohol Strategy, Summer 2008, p.3. This has involved a series of operations to target underage drinking and work with the Departments of Health and Education, District Policing Partnerships and others to address wider problems associated with alcohol misuse.

16. It is illegal to (i) drink alcohol in a designated non-drinking area; (ii) drink alcohol on a route of a public procession (this applies six hours prior to the parade taking place); (iii) drink alcohol under the age of 18 years in a public house.



I am pleased to report that, like 2006 and 2007, the parades that I monitored this year passed off without significant violence and when tensions increased between parade supporters and protesters, as they did, for example, at the Ardoyne shopfronts after the return parade on the night of 12 July 2008, the PSNI response prevented those tensions from escalating into violence.

Against that background, in respect of the Whiterock parade on 28 June and the 12 July Ardoyne parades and 12 July Springfield Road parade, I conclude that the strategic, tactical and operational planning of the policing operations was careful and considered. The human rights of paraders and their supporters, protesters, residents and police officers were taken into account at all stages of the planning processes. Senior commanders responsible for the operations reacted to the changing circumstances of the operations as events unfolded in the days leading up to the parades and on the days of the parades themselves with professionalism and proportionality. The policing of each of the parades on the day was operationally effective and demonstrated a high degree of flexibility and sensitivity.

Once again, I make no recommendations in relation to the policing of the Whiterock parade on 28 June 2008, the 12 July 2008 Ardoyne parades or the 12 July 2008 Springfield Road parade.

# Chapter 8: USE OF FORCE

Police officers have statutory powers which include the authority to use force in specified circumstances. The regulation of the use of force by police officers raises fundamental human rights issues. It is critical that the PSNI has in place clear policies to guide officers in the use of force and effective internal procedures for monitoring and reviewing all uses of force.

# 08

## AUDIT OF PSNI POLICIES ON THE USE OF FORCE

In our 2007 Annual Report, we reported on the new PSNI use of force policy directive (Use of Force Policy) and a number of PSNI service procedures regarding the use of firearms, firearms tactical advisers and post-incident procedures following discharge of firearms by police.<sup>1</sup> These service procedures have now been consolidated into the policy directive on the police use of firearms (Firearms Policy). The consolidation of a total of 15 PSNI policies and service procedures on the use of force and the use of firearms into these two overarching policy directives is a positive development which should assist officers in understanding and applying the relevant tests for the use of force and their legal powers in relation to the use of force. I analyse the Firearms Policy in more detail below. First, I comment on the changes made to the PSNI Use of Force Policy following its review and revision this year.

### PSNI policy on use of force

In our 2007 Annual Report, we reported on the PSNI Use of Force Policy.<sup>2</sup> That the Use of Force Policy consolidated ten PSNI service procedures.<sup>3</sup> The policy sets out procedures and guidance in respect of the use of force by police officers and is designed to be the principal reference on which all applications of force are based.<sup>4</sup> The section setting out the legal framework for the use of force clearly defines the legal tests for the use of lethal and non-lethal force.

The Use of Force Policy was reviewed and reissued in 2008.<sup>5</sup> As part of the review of the policy, all references to the Code of Ethics have been revised to reflect the new Code of Ethics 2008. Amendments have also been made to include reference to the new ACPO Manual of Guidance on Keeping The Peace,<sup>6</sup> which the PSNI has adapted and revised<sup>7</sup> to produce a PSNI Manual of Guidance on Keeping The Peace and Public Order Criminal Justice Strategy.<sup>8</sup> The policy also cross-refers to the PSNI Public Order Tactics Manual which provides guidance on standard public order policing tactics and training.<sup>9</sup>

The section of the policy outlining procedures and guidance for the deployment and use of CS incapacitant spray (CS spray) has been revised to record that each use of CS spray must be reviewed by the relevant District Commander.<sup>10</sup> Officers are now explicitly instructed that where an officer is faced with a threat from multiple aggressors and CS spray is drawn but not used, the subsequent report of the use of force should contain an estimate of the number of members of the

1. 2007 Annual Report, chapter 8, pp. 148-152.

2. PSNI Policy Directive PD 07/07, Public Order and the Use of Force, 8 June 2007.

3. The following PSNI service procedures have been cancelled following incorporation: Human Rights and Police Use of Force Policy, Personal Safety Programme Policy, Baton Policy, Water Cannon Policy, CS Spray Policy, Public Order Tactical Advisers Policy, Protest Activity in Public Thoroughfares Policy, Command Structures - Police Operation/Events Policy, Operational Guidelines on the Use of Vehicles where there is a serious and immediate threat to life in situations of public disorder and Guidelines for the Wearing of Public Order Protective Equipment.

4. Use of Force Policy, s.3(1).

5. The policy was reissued on 28 August 2008.

6. Which replaced the ACPO Guide to Public Order Policing.

7. In accordance with Northern Ireland legislation and PSNI policy.

8. Use of Force Policy, s.7(2)(1).

9. Use of Force Policy, s.7(3).

10. Use of Force Policy, s.7(8)(1).

public involved and if known, the identity of any person(s) who could reasonably have been expected to anticipate the threat of CS spray being used against them.<sup>11</sup> The section on CS spray also cross-refers to the PSNI service procedure on positional asphyxia and excited delirium.<sup>12</sup>

The section of policy outlining procedures and guidance for the deployment and use of water cannon records that a post incident review of deployment and use of water cannon will be conducted by the relevant District Commander to determine whether the use of water cannon was justified, whether the objective of deployment was achieved and to identify any improvements that could be made in future deployment and use.<sup>13</sup>

The revised Use of Force Policy also includes a new section on electronic use of force monitoring. I discuss this in more detail later in the chapter.

The revised PSNI Use of Force Policy provides officers with clear procedures and guidance in relation to the use of force. Critically, the section setting out the legal tests for the use of force is clear and well defined. It fully integrates relevant human rights standards and principles. The revisions made to the policy, including the revised references to the Code of Ethics 2008, and inclusion of the post-incident reporting and review procedures in relation to the use of water cannon and CS spray are welcome additions.

However, the Firearms Policy (see below) includes an additional sub-section reminding officers of their special responsibilities in relation to children and members of other vulnerable groups.<sup>14</sup> This is absent from the Use of Force Policy and I suggest inclusion of this sub-section within the policy as part of the next annual review.

### **PSNI Policy on use of firearms**

In our 2007 Annual Report, we reported that our 2007 audit of PSNI policy indicated that the PSNI policy on the use of firearms had not been revised or updated since its introduction in November 2001.<sup>15</sup> Contrary to the PSNI's indication, the policy had not been amended to reflect the recommendation we had made in our 2005 Annual Report. In our 2007 Annual Report, we noted, however, that the PSNI was drafting a consolidated overarching Policy Directive on the use of firearms that would include policies on firearms and AEPs, and that drafting of this Directive was at an advanced stage. We therefore recommended that the PSNI ensure the amendments we previously recommended were included in this new policy.

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11. Use of Force Policy, s.7(8)(14)(b).

12. Use of Force Policy, s.7(8)(5).

13. Use of Force Policy, s.7(9)(14)(b).

14. Use of Firearms Policy, s.3(2)(f).

15. PSNI General Order 61/2001, 29 November 2001.

The new PSNI policy directive on police use of firearms (Firearms Policy) was issued on 28 August 2008.<sup>16</sup> I have reviewed the new PSNI Firearms Policy. The policy replaces seven service procedures.<sup>17</sup> It sets out procedures and guidance on the issue, deployment and use of firearms, including AEPs. Separate guidance on the use of Taser is provided in a separate PSNI service procedure (discussed below). It is intended to follow the ACPO Manual of Guidance on Police Use of Firearms.<sup>18</sup> The policy has a 12 month review date. The Firearms Policy sets out in clear terms the legal rules governing the use of lethal and non-lethal force.<sup>19</sup> The policy cross-refers to the PSNI Code of Ethics and summarises correctly relevant human rights provisions, as recommended in our 2005 Annual Report. It also places greater emphasis on the need to record and report to supervisors any incident involving the use of force, the requirement for a comprehensive and independent investigation where death or injury occurs and an obligation to inform the family of an injured or affected person at the earliest opportunity. The Firearms Policy highlights police officers' special obligations in relation to children and members of other vulnerable groups and cross refers to the UN Convention on the Rights of the Child.<sup>20</sup>

The Policy provides clear and practical guidance on the legal basis of the use of firearms and will assist with the training of police officers in the issue and use of firearms and inform operational decision-making and planning of operations where firearms may be deployed and used. I am satisfied that the amendments we recommended in 2005 have been incorporated into the Firearms Policy. I therefore consider Recommendation 37(b) of our 2005 Annual Report to be implemented in full.

## MONITORING THE USE OF FORCE

In our 2007 Annual Report, we reported that Recommendation 36 of our 2005 Annual Report, that the PSNI should provide statistics on all uses of force on a quarterly basis to the Policing Board, remained outstanding. We were critical that the PSNI had only commenced its pilot of the electronic use of force monitoring form in August 2007 and recommended that the PSNI should complete the pilot expeditiously and following completion of the evaluation of the pilot, move promptly to introduce the electronic form across the PSNI.<sup>21</sup>

The PSNI completed its evaluation of the pilot of the electronic use of force monitoring form and introduced the electronic monitoring form across the Service in January 2008. I therefore consider Recommendation 24 of our 2007 Annual Report to be implemented in full.

16. Policy Directive 12/08.

17. The following PSNI service procedures have been cancelled following incorporation: human rights and the police use of firearms; firearms tactical advisers; carriage of firearms in situations of public disorder; service guidance in relation to issue, deployment and use of AEPs in situations of public disorder; guidelines on AEPs as a less lethal option in non-public order situations, Heckler and Koch weapons and the ACPO Manual of Guidance on Police Use of Firearms.

18. The policy notes that the ACPO Manual is currently under review but it is the intention that PSNI policy will fully reflect the revised ACPO Manual, subject to variances due to the particular circumstances of Northern Ireland.

19. The section of the Firearms Policy setting out the legal tests for the use of lethal and non-lethal force mirrors the same section included in the Use of Force Policy.

20. Article 3 of the UN Convention on the Rights of the Child requires the best interests of children to be a primary consideration in all actions concerning children.

21. 2007 Annual Report, Recommendation 24.

The PSNI electronic use of force monitoring form records the following types of use of force:

- (i) AEP;
- (ii) baton (drawn but not used);
- (iii) baton (drawn and used);
- (iv) CS spray (drawn but not used);
- (v) CS spray (drawn and used);
- (vi) police dog;
- (vii) firearms (drawn and/or pointed but not used);
- (viii) firearms (when used); and
- (ix) water cannon.

The electronic use of force monitoring form does not yet include the use of Taser. Currently a separate form has to be completed by specialist firearms officers for each use of Taser. Any other incident that involves the use of force by an officer should be recorded in an officer's notebook and reported to the officer's supervisor.<sup>22</sup>

As I noted earlier in the chapter, the revised PSNI Use of Force Policy now includes a section on the PSNI electronic monitoring of uses of force. The section informs officers that the PSNI is obliged to collect data on the use of force by officers in self-defence, arrest and restraint situations and reminds them of their responsibility to protect the confidentiality and integrity of PSNI information as required by the Data Protection Act.<sup>23</sup>

The PSNI currently provides the Policing Board with statistics on the use of AEPs, the use of water cannon and the use of CS spray. On this basis, I consider Recommendation 36 of our 2005 Annual Report to be implemented in full but I make the subsequent recommendation that the PSNI should provide the Policing Board with statistics on all categories of uses of force recorded on the PSNI electronic use of force monitoring system on a six monthly basis.

### **Recommendation 21:**

**The PSNI should provide the Policing Board with statistics on all categories of uses of force recorded on the PSNI electronic use of force monitoring system on a six monthly basis.**

<sup>22</sup>. Use of Force Policy, s.7(13)(1)(d).

<sup>23</sup>. Use of Force Policy, s.7(13)(6).

## USE OF AEP IMPACT ROUNDS

We have previously noted that the use of equipment such as AEPs, water cannons and CS spray is not prohibited as such under the European Convention on Human Rights (ECHR), but that strict guidelines are needed for its use.<sup>24</sup> We have also stated that we do not accept that the ECHR or the Human Rights Act 1998 requires, still less imposes, a blanket prohibition on the use of AEPs against children and young people. However, there is no doubt that the younger the individual against whom an AEP is used, the stronger the justification for use will have to be.

### PSNI procedure on use and deployment of AEPs

In our 2007 Annual Report, we reported on amendments made to the PSNI procedure on deployment and use of AEP impact rounds (AEP policy) to include more specific references to children and young people following a series of meetings held in 2006 and 2007 between representatives of NICCY, the PSNI, the Policing Board and the NIO.<sup>25</sup> We recorded that the policy includes specific reference to children and young people in the human rights and use of force section, the warnings section, the section on spontaneous outbreaks of serious public disorder, the section on records, and also in the section on training. We concluded that the PSNI's AEP policy is strict. It explicitly requires that every effort should be made to ensure that children or members of other vulnerable groups are not placed at risk by the firing of an AEP. When making a decision to authorise the issue of AEPs, commanders are required to give consideration to the possibility that children or members of other vulnerable groups may be present. The policy also requires AEP system commanders to conduct a dynamic risk assessment regarding the presence of children and members of other vulnerable groups at scenes of public disorder before authorising deployment and use of AEPs.

Nevertheless, in our 2007 Annual Report we recommended that the PSNI should consider whether it should further amend its AEP policy to include guidelines that reflect the following:

“The younger the individual against whom an AEP is used, the stronger the justification for use will have to be. Moreover, below a certain age, it is difficult to envisage any circumstances when the use of AEPs will be justified.”<sup>26</sup>

24. In our Monitoring Framework, Policing Board, Monitoring PSNI Compliance with the Human Rights Act 1998, December 2003, and in our 2007 Annual Report, chapter 8, p.154.

25. 2007 Annual Report, chapter 8, pp. 152-156.

26. 2007 Annual Report, Recommendation 22.

In March 2008, the PSNI responded in writing to the Policing Board. It stated that it had carefully considered the proposed amendment to the AEP policy. However, for the reasons set out below, the PSNI did not consider the adoption of the recommendation to be appropriate:<sup>27</sup>

- a.** PSNI's current AEP policy already contains references to the particular issues related to children (and members of other vulnerable groups) concerning AEPs. These safeguards, coupled with the extremely high threshold for use of AEPs, mean that there are few circumstances in which AEPs can be used.
- b.** Many perpetrators of violence against children are themselves children. An outright prohibition on the use of AEPs against children (or against children below a certain age) could result in either (i) an increased likelihood of the use of conventional firearms by police or (ii) an ineffective police response, leading to a higher risk of death or serious injury of a child."
- c.** The wording suggested in the recommendation "would introduce a degree of subjectivity, which might detract from the existing degree of certainty in the guidance."
- d.** The wording suggested may introduce "an issue of potential imbalance as between children and members of other vulnerable groups."

I accept that the PSNI has considered the amendments we proposed to the AEP policy. I therefore consider Recommendation 22 of our 2007 Annual Report to be implemented in full. I recognise that the current PSNI AEP policy does contain specific references to children. I also acknowledge that AEPs have been used in Northern Ireland in a very limited number of circumstances over the last five years.

I do not, however, agree with some of the PSNI's reasons for rejecting the inclusion of the suggested wording in its AEP policy. The vast majority, if not all, of the occasions when AEPs have been used by the PSNI over the last five years have been in the context of serious public disorder. This is when officers may be faced with a rioting crowd which includes children and young people. The proposed wording does not require the PSNI to adopt an outright prohibition on the use of AEPs against children. Rather, the wording seeks to provide further additional guidance to officers that the younger the individual against whom an AEP is used, the stronger their justification for use of AEPs will have to be.

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<sup>27</sup>. Letter ACC Operational Support to the Chairman of the Policing Board's Human Rights & Professional Standards Committee dated 18 March 2008.



This does not create a potential imbalance between children and members of other vulnerable groups. Rather, it reflects the basic position that under ECHR Article 2, it will be very difficult for an officer to be able to justify the use of potentially lethal equipment like AEPs against very young children.

I therefore this year make the recommendation that the PSNI *should* amend its AEP policy to include guidelines that reflect the following:

“The younger the individual against whom an AEP is used, the stronger the justification for use will have to be. Moreover, below a certain age, it is difficult to envisage any circumstances when the use of AEPs will be justified.”

### **Recommendation 22:**

**The PSNI should amend its AEP policy to include guidelines that reflect the following:**

**“The younger the individual against whom an AEP is used, the stronger the justification for use will have to be. Moreover, below a certain age, it is difficult to envisage any circumstances when the use of AEPs will be justified.”**

### **Training on the use of AEPs**

In our 2007 Annual Report, we recorded that when we met with representatives of NICCY in April 2007, they expressed concerns about AEP initial training.<sup>28</sup> During 2007, we observed various elements of the initial AEP training course.<sup>29</sup> In our 2007 Annual Report, we noted our concerns that the PSNI AEP training course failed either to expressly refer to the PSNI’s new AEP policy or to incorporate explicit consideration of the rights of children and young people and we recommended that the PSNI review its AEP training course to address these points.<sup>30</sup>

In September 2008 the PSNI reported that it had conducted a review of the AEP training course. I have been provided with two revised lesson plans for the AEP initial training course and a handout of the AEP powerpoint presentation which is currently being delivered by trainers from PSNI Combined Operational Training. Unfortunately, although I had intended in 2008 to observe the revised PSNI initial AEP training course, the course I was due to observe was rescheduled. I am

28. Meeting between NICCY and Policing Board’s human rights advisors on 17 April 2007.

29. The three day course includes lessons on PSNI service guidelines, human rights and the police use of force, a handling class and range practice, which includes a pre-qualification shoot, a qualification shoot and a tactical shoot. At the end of the course, officers complete an exam and a classification shoot in order to be awarded classification as an AEP gunner. Following initial classification, officers are required to attend refresher training twice annually. For further detail, refer to 2007 Annual Report, chapter 8, pp. 156-157.

30. 2007 Annual Report, Recommendation 23.

therefore unable to comment on the delivery of the revised AEP training course. I have examined the revised AEP training course materials. The materials make express reference to the rights of children and young people. In particular, the AEP initial training course lesson plan includes a reference to article 3 (c) of the UN Code of Conduct for Law Enforcement Officers and states that “[u]se of firearms (AEPs) is an extreme measure - every effort should be made to exclude use of firearms (AEPs) against children EXCEPT when suspect offers armed resistance or jeopardises the lives of others and less extreme measures cannot be utilised”. (PSNI emphasis).<sup>31</sup>

The powerpoint presentation includes a specific slide on children and cites Article 3 of the Convention on the Rights of the Child and Article 3 (c) of the UN Code of Conduct for Law Enforcement Officers. The further slide reminds officers of the requirement to make a detailed record of the grounds for their decision to fire AEPs and states that it must identify, where possible, the presence of children or other vulnerable groups and why the decision to fire at a particular person was necessary and proportionate.

I recognise the efforts the PSNI trainers have made to integrate the explicit consideration of the rights of children and young people and other vulnerable groups within the AEP training course materials. Obviously it is important that this guidance is articulated during the delivery of the AEP training course in order to give clear guidance to officers on the use of AEPs against children and young people and other vulnerable groups.

I therefore consider Recommendation 23 of our 2007 Annual Report to be implemented in full but make the new recommendation that the PSNI internal evaluation team should evaluate the AEP initial and refresher training courses and report its findings to the Policing Board within six months of the publication of this report.

**Recommendation 23:**

**The PSNI internal evaluation team should evaluate the AEP initial and refresher training courses and report its findings to the Policing Board within six months of the publication of this report.**

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31. PSNI Combined Operational Training AEP Initial Lesson Plan on the Use of Force, p. 4.

## PSNI USE OF WATER CANNON

In our 2006 Annual Report, we recommended that the PSNI should provide reports to the Policing Board on a six-monthly 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.<sup>32</sup> This is a continuing reporting obligation.

The PSNI formally reported that water cannon were not used during the period 1 April 2007 to 31 March 2008. In our 2007 Annual Report, we recorded that we had agreed with the PSNI that an internal annual review of the use of water cannon would not be required in years where water cannon were not used. Against this background, I consider the continuing reporting obligations in relation to the deployment and use of water cannon to be discharged for this year.

## PSNI USE OF CS SPRAY

### Training on the use of CS spray

In our 2007 Annual Report, we reported on our observation of CS spray training delivered by Urban Region Operational Command Unit trainers.<sup>33</sup> We considered that the practical lesson on the use of CS spray effectively integrated and applied human rights principles but noted that we had a number of minor reservations regarding the classroom presentation.<sup>34</sup> Whilst we made no formal recommendation, we suggested that the PSNI's internal evaluation team should consider our reservations regarding possible confusion about the tests for the use of force in all lessons dealing with the use of force, public order equipment and personal protection equipment as part of its internal evaluation of the delivery of human rights. I report on the activities of the PSNI internal evaluation team in detail in chapter 2 of this report. The internal evaluation team has confirmed our concerns regarding confusion about the tests for the use of force on the part of some trainers. This is a serious matter of concern which the PSNI must address. I have therefore made a recommendation in relation to this matter in chapter 2.

### Use of CS spray, 1 April 2007 - 30 June 2008<sup>35</sup>

There were 678 deployments of CS spray in the 15 month period between April 2007 and June 2008.<sup>36</sup> 79% of the deployments (535) resulted in the use of CS spray. Figure 1 below compares the number of instances where CS spray was deployed and not used with the number of instances where CS spray was deployed and used for the period.

32. 2006 Annual Report, Recommendation 28, p.79.

33. The training comprises a presentation on PSNI policy on the carriage and use of CS spray, a practical class on use of CS spray and exposure to the spray.

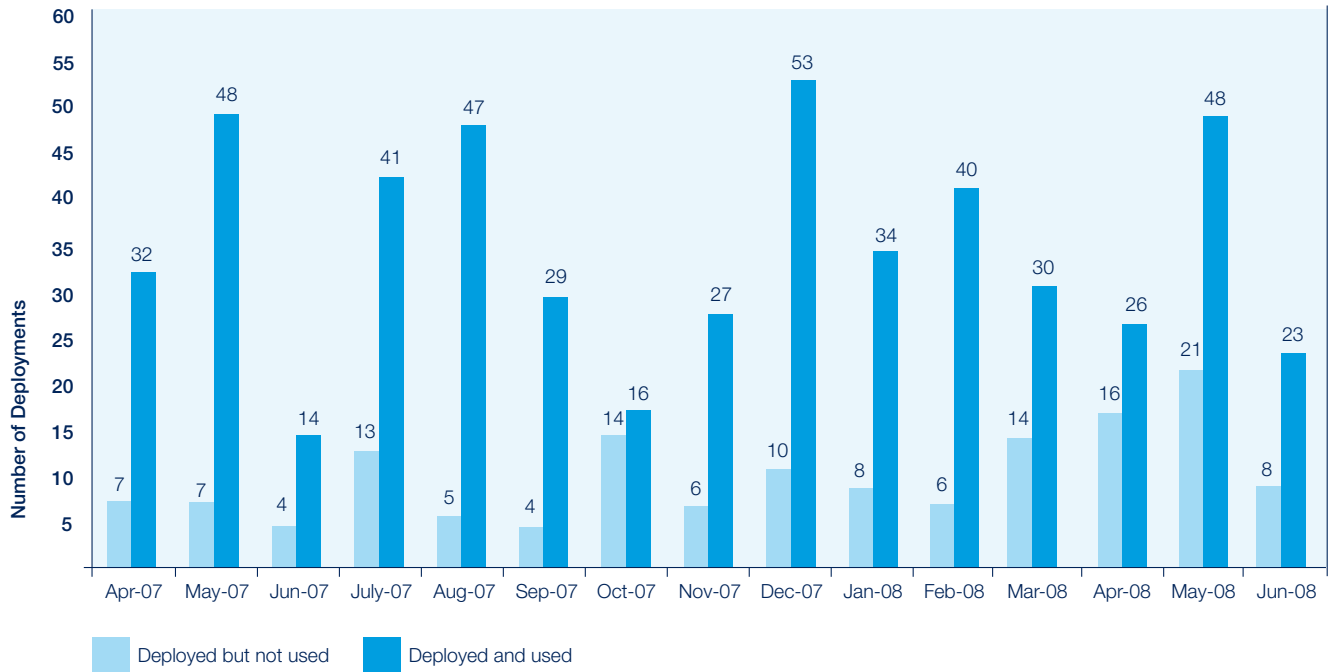
34. 2007 Annual Report, chapter 8, p.160.

35. In this year's report, I consider the extended period to June 2008.

36. PSNI Central Statistics Unit, Quarterly Report: Statistics on the Use of CS Spray (PSNI Central Statistics Unit Report).

**Figure 1:**

Use of CS spray, 1 April 2007 to 30 June 2008



As Figure 1 indicates, the highest number of deployments resulting in CS spray being used was in December 2007 (53), the lowest was in October 2007 (16). The number of deployments of CS spray decreased from 554 in 2005/2006 to 460 in 2006/2007. However the number has increased to 536 for the corresponding 12 month period in 2007/2008.<sup>37</sup> The number of deployments in which CS spray was actually used reduced from 412 in 2005/2006 to 369 in 2006/2007 but, again, has risen in 2007/2008<sup>38</sup> to 386 for the corresponding period. The level remains lower than in 2005/2006.

### Policing Board monitoring of use of CS Spray

In our 2006 Annual Report, we recommended that the PSNI and the Policing Board should revisit Recommendation 41 of the 2005 Annual Report and agree how further information can be supplied to the Policing Board to allow it to monitor more effectively the use of CS spray for compliance with the Human Rights Act 1998.<sup>39</sup> The PSNI accepted our recommendation and suggested

37. 1 April 2007 to 31 March 2008. The figures for the quarter to June 2008 reflect a return to 2006/2007 levels.

38. 1 April 2007 to 31 March 2008.

39. 2006 Annual Report, Recommendation 29, p. 86.

that the collation and reporting of statistics would be improved following introduction of the electronic Use of Force Monitoring Form.<sup>40</sup>

In our 2007 Annual Report, we were critical that the PSNI had only commenced its pilot of the Use of Force Monitoring Form in August 2007, with the result that the Policing Board continued to be in the unacceptable position of the PSNI not providing it with adequate information to allow it to evaluate whether the use of CS spray complies with the Human Rights Act 1998. We considered Recommendation 29 of our 2006 Annual Report and Recommendation 41 of our 2005 Annual Report to remain outstanding.

Following the introduction of the electronic use of force monitoring form in January 2008, the PSNI now provides much more detailed statistics to the Policing Board on the use of CS spray on a quarterly basis.

The statistics analyse the use of CS spray according to:

- a.** each PSNI District;
- b.** type of police activity;<sup>41</sup>
- c.** type of incident type;
- d.** location of use;
- e.** reason for use; and
- f.** age and gender of the individual against whom it was used.

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<sup>40.</sup> Which will include reference to location, date, time of incident, injuries sustained, damage to property and other appropriate information.

<sup>41.</sup> Mobile patrol, foot patrol, public order, single officer patrol and TSG.

I set out an analysis of the use of CS spray according to type of police activity and type of incident for the period 1 January 2008 - 30 June 2008 in Tables 1 and 2 below.

**Table 1:**

Use of CS spray by police activity 1 January 2008-30 June 2008

Police activity	CS deployed and used	CS deployed not used	Total
Mobile Patrol	168	52	220
Foot Patrol	4	1	5
Public Order	21	12	33
Traffic <sup>42</sup>	0	1	1
Single Officer Patrol	0	2	2
TSG <sup>43</sup>	0	1	1
Other	0	1	1
<b>Total</b>	<b>193</b>	<b>70</b>	<b>263</b>

**Table 2:**

Use of CS spray by incident type, 1 January 2008-30 June 2008

Incident Type	CS deployed and used	CS deployed not used	Total
Public Order	71	20	91
Traffic	5	4	9
Crime	8	8	16
Assault	57	24	81
Domestic	32	4	36
Suspicious Person	3	1	4
Terrorism	0	1	1
Custody <sup>44</sup>	1	1	2
<b>Total</b>	<b>177</b>	<b>63</b>	<b>240</b>

Table 1 demonstrates that the majority of CS spray use occurred when police officers were on mobile patrol. Table 2 indicates that assault and public order situations were the most common types of incident being dealt with at the time of CS spray use. The most common reason given by officers (82%) for using CS spray was for self-protection. The group against whom CS spray was most

42. Figures not available for 1 April to 30 June 2008.

43. Figures not available for 1 January to 31 March 2008.

44. Figures not available for 1 January to 31 March 2008.

commonly used was males aged between 18 and 29 years (40%).<sup>45</sup> There were 11 reported injuries as a result of CS spray use during the six month period, 1 January 2008 to 30 June 2008.

I am satisfied that the statistics now provided by the PSNI enables the Policing Board to monitor more effectively the use of CS spray by the PSNI by tracking patterns of use and investigating any trends which cause potential concern.

Specific complaints regarding the use of CS spray by individual police officers obviously fall within the jurisdiction of the Police Ombudsman. All individual complaints regarding the use of CS spray will be investigated and a Regulation 20 report issued. I discuss Regulation 20 reports in chapter 6. It is, however, noteworthy that in 2007/2008, only one complaint was made regarding the use of CS spray and in that case the Police Ombudsman found the use of CS spray to be necessary, proportionate and justified in the circumstances.

Against this background, I consider Recommendation 24 of our 2007 Annual Report, Recommendation 29 of our 2006 Annual Report and Recommendations 36 and 41 of our 2005 Annual Report to be implemented in full but remind the PSNI of the continuing nature of these obligations.

### **PSNI internal review of use of CS spray**

In our 2006 Annual Report, we adjusted a 2005 recommendation to require that the PSNI assign responsibility internally for an annual (rather than a six-monthly) review of all uses of CS spray and for issuing guidelines on best practice to police officers further to these internal reviews.<sup>46</sup> In our 2007 Annual Report, we reported that PSNI Operational Support had indicated that, due to the resource intensive nature of the review, other issues or work areas would be given priority over the annual review of the PSNI's use of CS spray. We were not satisfied with the PSNI's response to our recommendation and in 2007, we therefore reinstated our recommendation that the PSNI should assign responsibility internally for reviewing annually all uses of CS spray, and for issuing guidelines on best practice to police officers and that the PSNI should provide the Policing Board with a summary of the findings and conclusions of its annual internal review.<sup>47</sup>

The PSNI has indicated that following the introduction of the electronic use of force monitoring form and the additional information now provided to the Policing Board on the use of CS spray, any internal annual review of use of CS spray and subsequent reports to the Policing Board on the findings and conclusions of that annual review would be duplication and would incur additional costs.<sup>48</sup>

<sup>45</sup>. PSNI Central Statistics Unit Report, 1 January to 30 June 2008.

<sup>46</sup>. 2005 Annual Report, Recommendation 42, p. 172.

<sup>47</sup>. 2007 Annual Report, Recommendation 25.

<sup>48</sup>. Letter ACC Operational Support to Policing Board's human rights advisor dated 19 August 2008.

I entirely agree that the electronic use of force monitoring form provides the PSNI with additional information on the use of CS spray and I welcome the additional information now provided to the Policing Board. I also welcome the requirement within the revised Use of Force Policy that the District Commanders review each use of CS spray.<sup>49</sup> However, the intention behind this recommendation was to establish an internal mechanism within the PSNI to track and trend the use of CS spray across all PSNI Districts to ensure consistent application of PSNI procedure and to inform guidance issued to officers. This mechanism appears to remain absent and as such, Recommendation 25 of our 2007 Annual Report remains outstanding. It may be, however, that the PSNI has established or intends to establish an alternative mechanism for tracking and trending *all* uses of force, including use of CS spray, following the introduction of the electronic monitoring form. The Policing Board intends to investigate this with the PSNI over the coming months and will reconsider the recommendation in light of its findings.

## ARMED RESPONSE VEHICLES

In our 2007 Annual Report, we reported on the PSNI's intention to introduce Armed Response Vehicles (ARVs) to provide initial armed response to spontaneous incidents where there is a real or perceived threat from a firearm or other weapon.<sup>50</sup> The primary role of ARVs will be to respond to such incidents and, where necessary, contain situations and conduct emergency entries.<sup>51</sup> PSNI has now recruited officers for the ARV posts who are currently undergoing the 11 week training course. Approximately 120 officers are being trained. The PSNI intends to introduce ARVs for deployment later in 2008.

## PSNI'S PROPOSAL TO INTRODUCE TASER

In our 2007 Annual Report, we reported on the Chief Constable's intention to introduce Taser and referred in some detail to the advice on the human rights implications of the proposed introduction of Taser that we had prepared for the Policing Board.<sup>52</sup> In that advice, we made a number of findings and recommendations. We found that the PSNI proposal to introduce Taser had human rights implications and therefore that the Policing Board, under its statutory duty to monitor the PSNI's compliance with the Human Rights Act 1998, had a duty to consider those human rights implications.

We concluded that Taser should be treated as potentially lethal equipment, rather than lethal or non-lethal. However, the fact that Taser should be treated

49. Use of Force Policy, s.7(8)(1).

50. 2007 Annual Report, chapter 8, p. 169.

51. When not actively engaged in dealing with spontaneous incidents, officers allocated to ARVs will conduct directed patrolling, for example, in protection of cash-in-transit deliveries and high-risk anti-robbery patrols.

52. Presented to the Policing Board in June 2007. We subsequently prepared a short second advice which we presented to the Policing Board in September 2007.



as potentially lethal did not mean that its use could never be compatible with Article 2 of the ECHR (the right to life) or the Human Rights Act 1998. We stated that the proper test under Article 2 ECHR and the Human Rights Act 1998 for the use of Taser is just below that for the use of lethal force (such as conventional firearms), but a much stricter test than that which applies for other uses of other (non lethal) force. It means that Taser can be used in circumstances where there is a threat to life or a threat of serious injury, but that threat has not quite reached the threshold where lethal force (such as conventional firearms) could be justified.

In our advice, we recommended that before the PSNI's proposal to introduce Taser is progressed, the Policing Board should satisfy itself that the PSNI:

- i.** has properly addressed the legal and human rights framework within which Taser can be used;
- ii.** should provide clear evidence of the capability gap requiring the introduction of Taser;
- iii.** has devised clear and robust policy, guidance and training to ensure that any use of Taser in Northern Ireland fully complies with the requirements of the ECHR and the Human Rights Act 1998 and, specifically, that the test for use of Taser which the PSNI adopts meets the threshold test set out in our May 2007 advice; and
- iv.** should ensure that all operations in which Taser might be used are planned and controlled so as to minimise, to the greatest extent possible, recourse to its use.

We also suggested that if the PSNI intends any wider use of Taser (e.g. for use in incidents where an individual is threatening self-harm), the PSNI should carefully consider the circumstances (if any) in which such use might arise and set out how such use would be compatible with the ECHR.

In relation to the equality considerations relating to the PSNI's proposal, we advised the Policing Board that it was for the Equality Commission to provide advice and guidance to the PSNI on its statutory equality obligations and that the Policing Board should endorse the advice provided by the Equality Commission and strongly encourage the PSNI to follow such advice.

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The Chief Constable informed the Chairman of the Policing Board in a letter dated 7 August 2007 that, following advice from the Equality Commission, the PSNI Senior Command Team had decided that a full Equality Impact Assessment (EQIA) would be conducted on the PSNI's proposed introduction of Taser and that a six month operational pilot of Taser would be conducted in tandem with the completion of the EQIA. The Equality Commission stated that "the issue of Taser to any officer would be inappropriate until the EQIA has been completed and its conclusions taken into account" in a letter to the PSNI dated 14 September 2007.

### Test for use of Taser

During November and December 2007, we were involved in discussions with PSNI Operational Support regarding the formulation of the PSNI's test for the use of Taser. We were concerned that the initial test formulated by the PSNI did not provide a sufficiently close nexus to the ECHR Article 2 threshold, nor that it was sufficiently linked to the avoidance of lethal force. The PSNI modified its test. In mid-December 2007, we informed ACC Operational Support that we were satisfied that, in substance, the test for use in the PSNI draft guidance reflected the test for use set out in our human rights advice of May 2007. We subsequently advised the Policing Board that the PSNI draft operational policy and guidance, read together, complied with the Human Rights Act 1998. However, we made clear that we would continue to keep the matter under review.

### Capability gap

In December 2007, we also indicated that having studied the Threat and Risk Assessment provided by the PSNI as evidence of a capability gap, as well as the command and control logs which supported the PSNI Risk Assessment analysis, we were satisfied that *some* of the examples provided clear evidence of a capability gap. We therefore considered this recommendation of our May 2007 advice to be met.

### Training on the use of Taser

I observed the PSNI two day training course on the use of Taser provided to specialist firearms officers on 21 and 22 January 2008. I was also provided by the PSNI with all PSNI training materials (including judgmental scenarios and additional notes for instructors) on the use of Taser. I indicated that I was largely content with the training but raised two concerns with PSNI Operational Support.<sup>53</sup>

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53. The first of these related to the need for clarity regarding the voltage level of the electrical current experienced by an individual who is the subject of simultaneous multiple discharges of Taser. The second concerned one of the training scenarios where officers had voiced concerns and the trainers had agreed to seek further tactical advice.

On 9 April 2008, I informed the Policing Board's Human Rights & Professional Standards Committee that overall, I was satisfied with the PSNI's response to my two outstanding concerns regarding PSNI training on the use of Taser.

I was informed by the PSNI that it was conducting an interim evaluation of its guidance and training on the use of Taser in April 2008.<sup>54</sup> I made a number of suggestions regarding the PSNI training, policy and guidance on the use of Taser.<sup>55</sup>

### **EQIA findings**

The PSNI presented the findings of the EQIA on the proposal to introduce Taser to the Policing Board on 19 June 2008. The EQIA identified a potential detrimental impact of the use of Taser on children and young persons, women, pregnant women, men, people from minority ethnic groups and people with disabilities. The PSNI proposed to take a number of steps to mitigate this potential detrimental impact, including the amendment of PSNI policy and guidance on the use of Taser and regular monitoring and review of the use of Taser.

### **PSNI proposal to permanently issue Taser**

At the Policing Board meeting, the PSNI set out its proposal to permanently issue Taser to Special Operations branch and to issue Taser to Armed Response Vehicles from October 2008.

### **Revised policy, guidance and training on the use of Taser**

I am currently reviewing the PSNI's revised policy, guidance and training on behalf of the Policing Board, which will be considering the Chief Constable's proposal to permanently issue Taser to specialist and authorised firearms officers, at its October 2008 Board Meeting.

### **Revised policy, guidance and training on the use of Taser**

I am currently reviewing the PSNI's revised policy, guidance and training on behalf of the Policing Board, which will be considering the Chief Constable's proposal to permanently issue Taser to specialist and authorised firearms officers at its October 2008 Board meeting.

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<sup>54</sup>. Letter ACC Operational Support to Policing Board's human rights advisor dated 2 April 2008.

<sup>55</sup>. Which included clarification that dual or multiple discharges of Taser will result in dual or multiple independent pulse trains being applied to the subject of the Tasers, as confirmed by the Home Office Scientific Development Branch.

# Chapter 9: COVERT POLICING

The interception of communications, surveillance and the use of covert human intelligence sources by the police is highly regulated. The Regulation of Investigatory Powers Act 2000 (RIPA) sets out rules which are intended to ensure that the interception of communications, surveillance and the use of covert human intelligence sources by the police are compatible with the Human Rights Act 1998. It also puts in place an oversight framework comprising the Chief Surveillance Commissioner who regulates and monitors adherence to the rules and a Tribunal for dealing with complaints.<sup>1</sup>

# 09

As part of this year's monitoring work, I have continued to monitor PSNI covert policing policies and procedures and covert policing training. I have also reviewed the involvement of the PSNI human rights legal adviser in the work of PSNI Crime Operations. Like previous years, I have examined the Surveillance Commissioner's 2008 report and the PSNI's response to it. I set out my observations below. In addition, I report on the operation of the working arrangements between the PSNI and the Security Service following transfer of primacy for national security intelligence work to the Security Service in October 2007. I also report on the current status of the PSNI's implementation of the recommendations in the Police Ombudsman's Operation Ballast Report.

## POLICIES AND PROCEDURES

In our 2007 Annual Report, we recorded that PSNI Crime Operations had taken a number of steps to embed human rights into all core business areas and that the PSNI human rights legal adviser had recently undertaken a review of all Special Operations Branch procedures.<sup>2</sup> We noted that the initiatives adopted were important. However, we also recorded that the PSNI Undercover policy had not been reviewed because national guidelines were currently being reconsidered and the PSNI was anxious that its policy should reflect those guidelines and the PSNI Members of the Public policy was currently under review, with a number of changes likely. We therefore considered Recommendation 33 of our 2006 Annual Report and Recommendation 46 of our 2005 Annual Report (which both required the PSNI to review the effectiveness of its policies on covert policing within twelve months) to be implemented only in part. In addition, we noted our concern that the Members of the Public policy was not very well understood and we therefore recommended that the PSNI complete its revision of the Undercover policy and the Members of the Public policy within 12 months of the publication of our 2007 Annual Report and that it consider how best to ensure that the Members of the Public policy is better understood by all PSNI officers for whom it is relevant.<sup>3</sup>

As a result of the transfer of responsibility for national security intelligence work from the PSNI to the Security Services, the nature of the activities of PSNI Intelligence branch has changed. The PSNI has therefore decided that it is timely to conduct a review of all current PSNI intelligence policies and procedures and all protocols and procedures between PSNI and external agencies. The objective of this review is to assess current policies, procedures and protocols to ensure that they are valid, up to date, within the boundaries of PSNI responsibility for

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1. The functions of the Commissioner and Tribunal are summarised in our 2005 Annual Report, chapter 9, p.124.  
2. 2007 Annual Report, chapter 9, pp. 175-176.  
3. 2007 Annual Report, Recommendation 26.

intelligence work and compliant with legislation and ACPO guidelines. The PSNI intends to develop an overarching policy on the management<sup>4</sup> of intelligence, which contains all relevant procedures and guidance on police intelligence work. To that end, the PSNI has established a Policy and Performance Unit within PSNI Intelligence branch and appointed a Chief Inspector to have responsibility for the development of the overarching policy. The PSNI human rights legal adviser will also be involved in the review process.

The PSNI Intelligence branch review is a welcome development. Against this background, I consider Recommendation 33 of our 2006 Annual Report and Recommendation 46 of our 2005 Annual Report to be superseded. I therefore withdraw these recommendations and replace them with the new recommendation that the PSNI should complete its review of intelligence policies, procedures and protocols and develop an overarching policy on the management of intelligence within twelve months of publication of this report but should report to the Policing Board on the progress of its review within six months of the publication of this report.

#### **Recommendation 24:**

**The PSNI should complete its review of all intelligence policies, procedures and protocols and develop an overarching policy on the management of intelligence within twelve months of publication of this report but should report to the Policing Board on the progress of its review within six months of the publication of this report.**

The PSNI Members of the Public policy is due to be replaced. I have reviewed the draft procedure and guidance which will stand in its place. The objective of the procedure is to ensure that PSNI officers handle information supplied by members of the public in a legal, effective and confidential manner. The procedure specifically applies to information provided by a member of the public with the expectation that it will be treated in a confidential manner. The guidance makes clear the distinction between members of the public<sup>5</sup> volunteering information to the police (where RIPA does not apply) and the use of individuals as covert human intelligence sources (where RIPA does apply).<sup>6</sup> Where there is any indication that an individual supplying information may be inadvertently crossing over into specific areas of activity governed by RIPA, an intelligence manager will conduct an immediate review. Repeat contacts are also the subject of review. The procedure makes reference to relevant codes of practice, ACPO guidance<sup>7</sup> and PSNI procedures for the management of intelligence.

4. Including collection and dissemination.

5. A member of the public is defined as any individual who contacts the police directly or comes into contact with the police and who supplies information expecting that information to be handled in a confidential manner.

6. RIPA, s.26(8).

7. Including ACPO Guidance on CHIS Management, ACPO Management of Police Information 2006 and ACPO Data Protection Manual of Guidance 2006.

The PSNI intends this procedure to form part of its overarching policy on the management of intelligence (discussed above). In the interim, the draft procedure has been provided to PSNI intelligence managers to ensure proper understanding of the important distinctions. I am satisfied that this draft procedure and guidance meets the concerns we highlighted in relation to the Members of the Public policy it is designed to replace. I therefore consider Recommendation 26 of our 2007 Annual Report to be implemented in full.

In our 2007 Annual Report, we made a further recommendation that the PSNI should consider the scope for incorporating a number of the Surveillance Commissioner's recommendations into the policy on Covert Surveillance Authorisation and the role of the Central Authorisations Bureau (CAB).<sup>8</sup> I discussed this recommendation with the Head of CAB in July 2008. He stated that the recommendations made by the Surveillance Commissioner in 2007 in relation to CAB related more generally to practice in the CAB unit (rather than its operational role). The Head of CAB agreed, however, that in the event that the Surveillance Commissioner makes recommendations in the future regarding amendments to or improvements in CAB's role, operational function or policy framework, these will be incorporated into PSNI policy as appropriate. Against this background, I consider Recommendation 27 of our 2007 Annual report to be implemented in full.

## COVERT POLICING TRAINING

### Training for Authorising Officers

In our 2007 Annual Report, we recorded that the PSNI had accepted our recommendation that only those officers who have completed the PSNI's Authorising Officers' course should be eligible as authorising officers.<sup>9</sup> The PSNI policy on Covert Surveillance Authorisations and the role of the CAB makes it clear that only those officers who have completed the course should be eligible as authorising officers. In our 2007 Annual Report, we noted that it is important that the training is maintained for those recruited as Authorising Officers and as a refresher for those authorising officers already in post.

In July 2008, the PSNI ran a three day Authorising Officers' course attended by 11 PSNI officers<sup>10</sup> and two representatives from the Office of the Police Ombudsman.<sup>11</sup> The PSNI's continuing commitment to making training available for its newly recruited and current authorising officers is welcome and should be maintained. I do not consider it necessary to make a further recommendation on this matter this year.

8. 2007 Annual Report, Recommendation 27.

9. 2006 Annual Report, Recommendation 31.

10. Superintendents and District Co-ordinators.

11. Email PSNI Head of CAB to Policing Board's human rights advisor dated 28 July 2008.

### Other covert policing training

Over the course of this year, I observed the training devised by the PSNI Intelligence Skills Team (IST) for PSNI officers engaged in Covert Human Intelligence Source (CHIS) handling in direct response to the Operational Ballast Report. The training provided was carefully focused and directed. Human rights issues were at the forefront of teaching and class discussions, which were open and animated. In total, 93% of PSNI officers engaged in CHIS handling (on the grounds of national security, serious crime and volume crime) have now received this bespoke training and the small number of remaining officers who have yet to complete the training have been prioritised.

The Operation Ballast Report also made the recommendation that PSNI officers appointed to Intelligence branch should have detective training to enable them to carry out their functions efficiently and effectively.<sup>12</sup> Over the course of the year, I met with senior PSNI intelligence officers to discuss the training provided to Intelligence branch officers. Since January 2008, a total of eight Investigative Skills courses have been delivered to PSNI Intelligence branch officers. Further courses are scheduled in the next months. By the end of 2008, close to 100% of PSNI Intelligence branch officers should have completed the Investigative Skills course.

The Policing Board will continue to monitor the PSNI's covert policing training as part of its annual human rights compliance assessment.

### ROLE OF PSNI HUMAN RIGHTS LEGAL ADVISER

In our 2007 Annual Report, we recorded that the PSNI had been making greater use of its human rights legal adviser on routine matters of covert policing.<sup>13</sup> We considered that this was a positive development and we recommended that in future, as a matter of standard practice, all PSNI material on covert policing of a general nature (e.g. policies, guidance and general forms) should be reviewed and approved by the PSNI human rights legal adviser before it is issued.<sup>14</sup>

In late August 2007, the PSNI human rights legal adviser relocated to PSNI Crime Operations in order to provide a more comprehensive service. The PSNI human rights legal adviser has reviewed all PSNI Crime Operations policy directives and service procedures issued in the last twelve months. Any changes or amendments suggested by the PSNI human rights legal adviser have been incorporated into the policies and procedures. In addition, the PSNI human

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12. Police Ombudsman Operation Ballast Report, recommendation 5.

13. Involving him attending Gold level meetings, providing operational advice and reviewing material on covert policing of a general nature, e.g. policies, guidance and general forms.

14. 2007 Annual Report, Recommendation 28.



rights legal adviser has been consulted on other generic documents produced by PSNI Crime Operations over the period, including documents defining standard operating procedures, command and control of specialist investigations and risk assessments. It has been agreed that in future, the PSNI human rights legal adviser will also review all informal guidance notes issued to specialist officers within Crime Operations.<sup>15</sup>

The wider involvement of the PSNI human rights legal adviser in the development and review of PSNI policy, procedure and guidance on all aspects of covert policing activity is to be welcomed and should assist the PSNI in meeting the strict procedural and legal standards and safeguards which apply in this area of policing. I consider Recommendation 28 of our 2007 Annual report to be implemented in full but remind the PSNI that this wider involvement of the PSNI human rights legal adviser should be maintained as a matter of standard practice.

I note that in our 2007 Annual Report, we commented that whilst undoubtedly covert operations raise complex human rights issues, it was important that the PSNI human rights legal adviser remained accessible across the PSNI. I have received no indication to suggest that the increased involvement of the PSNI human rights legal adviser in Crime Operations has hampered other PSNI departments from obtaining human rights advice or guidance. This is however an important matter for the PSNI human rights legal adviser to continue to monitor.

## THE CHIEF SURVEILLANCE COMMISSIONER'S REPORTS

We have now reviewed the reports of the Chief Surveillance Commissioner every year since 2002. The 2008 report was sent to the Chief Constable on 30 April 2008, following a four day inspection conducted between 25 and 28 March 2008. I have had unrestricted access to that report and to the Chief Constable's response. I have also discussed both these documents with the Head of CAB.

The 2008 report recorded that only three of the 20 recommendations made by the Surveillance Commissioner in 2006<sup>16</sup> and 2007<sup>17</sup> remain extant. Two of these relate to the procurement of IT systems and the third is the result of delay arising from consultation with a large number of external stakeholders in relation to protocols for the use of CCTV owned by public and private authorities. However, the Surveillance Commissioner noted that the PSNI had produced a consultative document containing "sound and compliant advice".

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15. Letter PSNI human rights legal adviser to Policing Board's human rights advisor dated 6 August 2008.

16. 6 recommendations made, two regarding IT systems extant.

17. 14 recommendations made, one regarding protocols for use of CCTV extant.

The focus of the 2008 inspection was two-fold. First, the audit of those entities that had resulted in recommendations in 2007. Second, the examination of a number of complex operations which had involved all types of covert activity. The premise for adopting this approach was that if complex investigations could be managed well in terms of RIPA compliance, then this would be a good indicator regarding the effectiveness of oversight mechanisms generally.

The Surveillance Commissioner made six recommendations in his 2008 report. Two of these concerned maintaining momentum in the implementation of specific IT systems. A third related to maintaining momentum in the production of the protocols for the use of CCTV owned by public and private authorities. The remainder of the recommendations were relatively general and minor in nature. The report concluded that the inspection team was “impressed by the Service’s excellent response to the recommendations made last year. It was evident that the Service benefits from strong leadership and from the detailed attention of its Central Authorisations Bureau (CAB). All of the personnel interviewed were confident in their use of the legislation and all appreciated the benefits it afforded them.”

The Chief Constable set out the action that the PSNI will take in response to each of these recommendations at a meeting with the Surveillance Commissioner on 28 May 2008. I have discussed the Chief Constable’s response with the Head of CAB. The PSNI will brief the Chair and Deputy Chair of the Policing Board in October 2008.

It is clear that the PSNI has built on the positive report of last year and continues to demonstrate its commitment to implementing the recommendations made by the Surveillance Commissioner in his annual reports. The Surveillance Commissioner’s letter to the Chief Constable records the “commendable response [of the PSNI] which has resulted in this achievement of a high level of compliance with the legislation”. This is to be welcomed.

## **COVERT SURVEILLANCE OF SOLICITOR CONSULTATIONS**

In our 2007 Annual Report, we reported that we met with ACC Crime Operations and the Head of CAB during 2006 and 2007 to discuss the covert surveillance by the PSNI of solicitors’ consultations with individuals detained by the PSNI.<sup>18</sup> I continued to monitor this practice in 2008 and met again with the Head of

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18. As a result of a particular incident involving the covert surveillance of a solicitor’s consultations at Antrim Serious Crime Suite.

CAB in July 2008. The position remains that covert surveillance of members of the legal profession is only undertaken in exceptional circumstances and legal safeguards remain in place to ensure the PSNI's compliance with RIPA and the Human Rights Act 1998.

## NATIONAL SECURITY: TRANSFER OF PRIMACY

In our 2006 Annual Report, we reported that the PSNI has accepted our recommendation that before the transfer of responsibility for national security intelligence work in Northern Ireland from the PSNI to the Security Services takes effect, the PSNI and the Policing Board should devise a framework to ensure that the transfer does not affect the compliance of the PSNI with the Human Rights Act 1998 or the Policing Board's ability to monitor such compliance.<sup>19</sup> The PSNI's resolve on this issue is reflected in the five foundational principles on which the transfer of national security was based.<sup>20</sup> The five principles are as follows: (i) all Security Service intelligence relating to terrorism in Northern Ireland will be visible to the PSNI; (ii) the PSNI will be informed of all Security Service counter terrorist investigations and operations relating to Northern Ireland; (iii) Security Service intelligence will be disseminated within the PSNI according to the current PSNI dissemination policy, and using police protocols; (iv) the great majority of national security covert human intelligence sources in Northern Ireland will continue to be run by PSNI officers under existing police handling protocols; and (v) there will be no diminution of the PSNI's ability to comply with the Human Rights Act 1998 or the Policing Board's ability to monitor said compliance.

During 2007, we provided the Policing Board with a number of interim briefings on the arrangements for the transfer of primacy of national security intelligence work in Northern Ireland from the PSNI to the Security Service. We were given access to the overarching Memorandum of Understanding negotiated between the PSNI and the Security Service, together with the Service Level Agreements setting out the details of the working arrangements between the PSNI and the Security Service. We reviewed and commented on the drafts of the Memorandum of Understanding and the Service Level Agreements.

In October 2007, responsibility for national security intelligence work transferred from the PSNI to the Security Services. Shortly before the transfer of primacy, we reported to the Policing Board that we were satisfied with the arrangements in place. We recorded that we were satisfied that the necessary accountability of the PSNI should be maintained through the requirement that PSNI personnel working in liaison with the Security Service remain subject to all legislation, policy

19. 2006 Annual Report, Recommendation 34, p. 95.

20. These five principles were accepted by the Government and are recorded in Annex E to the St. Andrew's Agreement. The St. Andrew's Agreement was concluded on 13 October 2006. On 10 January 2007, the Prime Minister issued a further statement on Annex E to the St. Andrew's Agreement. Also included in Annex E was an acceptance that, as the Policing Board's Human Rights advisors, we should have a role in proofing the relevant protocols between the PSNI and the Security Services that will underpin these five principles and confirm that satisfactory arrangements are in place to implement them.

and procedure governing PSNI actions and accountable to the Chief Constable, the Policing Board and the Police Ombudsman. As such, there should be no diminution of the PSNI's ability to comply with the Human Rights Act 1998 or the Policing Board's ability to monitor said compliance.

Since October 2007, I have had a series of meetings with senior officers within PSNI Crime Operations to discuss the working arrangements between the PSNI and the Security Service. Certain issues have arisen over the period which have required further discussion and clarification but, overall, the arrangements in place appear to be working satisfactorily. The Policing Board will continue to monitor the arrangements between the PSNI and the Security Service to ensure there is no diminution of the PSNI's ability to comply with the Human Rights Act 1998.

## OPERATION BALLAST

In our 2007 Annual Report, we reported on our role, on behalf of the Policing Board, in monitoring the PSNI's response to the recommendations made in the report published by the Police Ombudsman on 22 January 2007 in relation to allegations of collusion between the RUC and paramilitary organisations from the early 1990s onwards.<sup>21</sup> The Police Ombudsman's report contained 20 recommendations. The last recommendation required the Policing Board to establish a mechanism to review the PSNI's response to the other recommendations<sup>22</sup> within six months and at appropriate intervals thereafter (Recommendation 20). The Policing Board accepted its responsibility for overseeing the implementation of the recommendations in the report and agreed that, as its Human Rights Advisor, I would examine, validate and report on the implementation of those recommendations.

I presented the third interim report<sup>23</sup> to the Policing Board in August 2008 on the status of implementation of the 17 recommendations made to the PSNI.

Since the second interim report, I have had detailed meetings with senior officers in PSNI Crime Operations, trainers in PSNI Special Operations Branch, the Deputy Director and senior members of the Historical Enquiries Team (HET), senior members of the Prison Service and the Director and Deputy Director of the Public Prosecution Service.

During the course of the last six months, the PSNI provided me with one written report on its work in progressing implementation of the outstanding Operation Ballast recommendations, together with other relevant documentation which

**21.** The main focus of the report was the murder of Mr. Raymond McCord Jr. in 1997. The report concluded, among other things, that Mr. McCord's murder had not been properly investigated and, more generally, that there had been ineffective management of CHIS, disregard for the law and collusion in the period in question.

**22.** That applied to the PSNI (two did not).

**23.** We presented the first interim report to the Policing Board in July 2007 and the second interim report in January 2008.

I requested. In addition, HET provided me with two written reports on its work in progressing recommendations 1-3. I reported to the Policing Board that I am satisfied that the PSNI has provided me with all the information I required to examine, validate and report on the current status of implementation of the recommendations in the Police Ombudsman's Operation Ballast Report.

In outline, as of August 2008, the PSNI has implemented 13 of the 17 Operation Ballast Report recommendations in full (recommendations 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 18) and the remaining 4 recommendations in part (recommendations 1, 2, 3 and 5). I set out below a short summary of my analysis of the current status of implementation of those four remaining recommendations.

### Recommendations 1 and 2

During the last six months, I have met with the Deputy Director of HET and senior members of the Complex Inquiries Team on a number of occasions to discuss implementation of the principal recommendations requiring re-investigation of various offences (recommendations 1 and 2).<sup>24</sup> The Complex Inquiries Team is currently investigating 19 murders (within 17 operations), 14 attempted murders and 14 punishment shootings within the parameters of its Operation Ballast investigation. All of the cases are at varying points of the focused investigation stage (stage two) of the five stage re-investigation model. Forensic opportunities have been identified in 18 instances.

All victims, including the victims of the attempted murders, have now been traced. A number of victims have been or are being debriefed and further evidence or intelligence obtained as a result of the debriefing process is the subject of ongoing investigation and/or verification. Some of the evidence or intelligence obtained has little or no connection with the Operation Ballast series of offences but point to other serious linked offences, including further allegations of serious criminal misconduct by police officers. These are now also the subject of investigation by the Complex Inquiries Team. In the event that the allegations of serious criminal misconduct by police officers are verified, these will be referred to the Police Ombudsman for further investigation.

Following my detailed discussions with HET over the last six months, I remain satisfied that the approach taken by the PSNI meets the intentions behind recommendations 1 and 2 of the Operation Ballast Report. Due to the complex nature of the re-investigation process, these recommendations continue to remain implemented in part. The Policing Board will continue to monitor the re-investigation process over the coming months.

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<sup>24</sup> Recommendation 1 required a thorough investigation of all crimes which the network of CHIS within the UVF in North Belfast and Newtownabbey have been associated, including the re-interview of all Special Branch handlers and controllers responsible for those CHIS and the referral of any indication of criminal behaviour by serving or returned officers to the Police Ombudsman. Recommendation 2 required the investigation of CHIS 1 as a suspect in all murders, attempted murders and serious crime for which he is suspected (treating them all as linked crimes).

### Recommendation 3

In March 2008, I met with the (then) Head of the PSNI CAB and the Director of the HET Complex Inquiries Team to review all Covert Human Intelligence Sources (CHIS), both national security and serious crime, deregistered as a result of the PSNI CHIS Risk Analysis Group review in 2003 (the CRAG Review).<sup>25</sup> We reviewed the individual case papers in relation to each CHIS deregistered and agreed which cases should be referred to HET for further investigation. Those cases have now been referred to the HET Complex Inquiries Team. Any evidence uncovered of police criminal misconduct will be referred immediately to the Police Ombudsman for investigation.

In my third interim report, I welcomed the PSNI's open and transparent approach to dealing with this recommendation and referring cases (together with case papers) to the HET Complex Inquiries Team. I stated that the recommendation requires an investigation of those CHIS who were deregistered in 2003 on the grounds of intelligence or evidence that they were involved in serious crime. Like recommendations 1 and 2, what is required is an effective investigation and that can best be judged at the end of the exercise.

I also reported that during meetings with HET in June 2008, I was informed that the current priority of the Complex Inquiries Team is to obtain and exploit evidential opportunities arising out of its re-investigation of the murders and attempted murders relating to recommendations 1 and 2. Linked individuals will be included within this process but otherwise, the reinvestigation required under recommendation 3 is likely to remain outstanding for some time to come.

### Recommendation 5

I reported on the status of implementation of this recommendation earlier in the chapter in the section on covert training.

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<sup>25</sup> The CRAG review examined all informants employed by the PSNI. Its remit was to ensure that the PSNI employment of CHIS was proportionate in relation to the terrorist threat.



# Chapter 10: VICTIMS

The treatment of victims of crime is a significant indicator of the commitment of police services to the defence and protection of human rights and fundamental freedoms. Victims are protected by the European Convention on Human Rights, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>1</sup> and many other international human rights instruments.

As part of this year's monitoring work, I continued to monitor statistics on the reporting and clearance rates of domestic and hate incidents, to examine PSNI policies and procedures for investigating crimes committed against particular victim groups and to consider specific issues affecting minority communities. I also report on victims' experiences of the service provided by the PSNI. I discuss these under relevant headings below.

# 10



## DOMESTIC VIOLENCE

Between 2006/2007 and 2007/2008, the number of reported incidents of domestic violence fell slightly from 23,456 to 23,076, a decrease of 380 (-1.6%). The number of recorded crimes with a domestic motivation also decreased in this period, from 10,115 in 2006/2007 to 9,283 in 2007/2008, a reduction of 832 (-8.2%). However, during 2007/2008, more than two thirds of all crimes with domestic motivation fell within the category of violent crime.<sup>2</sup> There were 6,389 such offences, representing 68.8% of the overall total. Table 1 sets out the number of reported domestic violence incidents, recorded crimes and clearance rates across Northern Ireland between 2006 and 2008.

**Table 1:**

Domestic violence incidents, crimes and clearance rates, 2006-2008

	2006/2007	2007/2008	Change
<b>Total number of incidents<sup>3</sup></b>	23,456	23,076	-380
<b>Total number of crimes<sup>4</sup></b>	10,115	9,283	-832
<b>Sanction clearance rate (%)<sup>5</sup></b>	31.1	33.9	+2.8% pts
<b>Non sanction clearance rate (%)<sup>6</sup></b>	14.7	0.0	-14.7% pts
<b>Overall clearance rate (%)</b>	45.8	33.9	-11.9% pts

The overall clearance rate for domestic violence crimes in 2007/2008 was 33.9%, 11.9 percentage points lower than in 2006/2007. Over the same period, the sanction clearance rate increased from 31.1% to 33.9%. There were only two non sanction clearances for crimes with a domestic motivation during 2007/2008. This significant decrease can be explained in large part by the change in the definition of non-sanction clearance<sup>7</sup> adopted by PSNI during the reporting year. The more useful comparative indicator is the sanction clearance rate<sup>8</sup> which stands at 33.9% for 2007/2008, representing an increase of 2.8 percentage points on the rate in 2006/2007, which itself was up by 7 percentage points on the rate in 2005/2006, showing a clear rising trend.

1. UN General Assembly Resolution 40/34 (1985).

2. PSNI Statistical Report No. 2, Domestic Incidents & Crimes, 1 April 2007 - 31 March 2008.

3. Defined as "any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) by one family member against another or adults who are or have been intimate partners, regardless of gender, and whether a crime has occurred or not", PSNI Statistical Report No. 2 Domestic Incidents and Crimes, 1 April 2007 - 31 March 2008.

4. Recorded crimes are those which are deemed to be indictable or triable-either-way. Indictable offences are those more serious crimes which are tried on indictment in the Crown Court. Triable-either-way offences are those offences which under certain circumstances are triable either summarily in a Magistrate's court or on indictment in the Crown Court. Not all domestic incidents will result in the recording of a crime.

5. Sanction clearances are those where a formal sanction is imposed on an offender by means of a charge, summons, caution or where the offence is taken into consideration at court.

6. The Home Office significantly restricted the clearance types available to police from 1 April 2007 which meant that virtually all clearances resulting in 'no further police action' (i.e. non sanction clearances) could no longer be claimed as a valid clearance. These clearance types accounted for 14.7% of the PSNI clearance rate for crimes with a domestic motivation

in 2006/2007 but only accounted for less than 0.1% in 2007/2008 following this latest restriction. This means that the PSNI overall clearance rate and its sanction clearance rate are now virtually one and the same.

7. This same change applied to all police services in England and Wales. Prior to the restrictions introduced on 1 April 2007, offences not involving a formal sanction but still regarded as 'cleared up' were those where the police took no further action on the grounds that the offender, victim or essential witness is dead or too ill, the victim refuses or is unable to give evidence, the offender is under the age of criminal responsibility, the police or PPS decides that no useful purpose would be served by proceeding or the time limit of six months for commencing prosecution has been exceeded.

8. In April 2006, the PSNI adopted a higher evidential standard in respect of non sanction clearances. This change was introduced in order to bring the clearance types more closely into line with police services in England and Wales where they have been applying the Crown Prosecution Service evidential test since 2002. In Northern Ireland, the equivalent standard only became relevant to PSNI clearances with the establishment of the Public Prosecution Service in June 2005. While this has had the effect of reducing the overall clearance rate, sanction clearances remain unaffected: PSNI Statistical Report No. 2 Domestic Incidents and Crimes, 1 April 2006 - 31 March 2007.

## Policing Board's Human Rights Thematic on Domestic Violence against Women

In May 2008, the Policing Board announced a human rights thematic inquiry into the effectiveness of the PSNI's approach to tackling domestic violence against women. The Human Rights Thematic will consider the PSNI's approach to tackling domestic violence against women and its compliance with human rights legislation in the following areas:

1. Prevention and protection.
2. Investigation and arrest.
3. Support for victims.
4. The role of PSNI Public Protection Units.
5. Inter-agency associations.

The Policing Board has sought written submissions on matters relevant to the Human Rights Thematic 2008 from interested individuals and organisations and intends to conduct a series of roundtables with specialists and particular victim groups over the coming months. A written report setting out the findings and recommendations of the Human Rights Thematic will be published at the end of the year.

### PSNI domestic incidents policy

In our 2007 Annual Report, we reported that following a comprehensive review, the PSNI was due to re-issue its policy on domestic incidents (PSNI domestic incidents policy) in October 2007. The policy uses the term 'domestic abuse' in recognition that the term 'domestic violence' does not always reflect abusive behaviour in its broadest sense. Domestic abuse is defined as "any incident of threatening behaviour, violence or abuse (psychological, physical, verbal, sexual, financial or emotional) inflicted on one person by another where they are or have been intimate partners<sup>9</sup> or family members,<sup>10</sup> irrespective of gender or sexual orientation."<sup>11</sup> We set out a detailed analysis of the new policy in our 2007 Annual Report<sup>12</sup> and I do not repeat it here.

9. Intimate partners means there must have been a relationship with a degree of continuity and stability. The relationship must also have had (or reasonably supposed to have had) a sexual aspect: PSNI domestic incidents policy, para.2(2)(b)(iii).

10. Family members include mother, father, son, daughter, brother, sister, grandparents, whether directly or indirectly related, in-laws or stepfamily: PSNI domestic incidents policy, para. 2(2)(b)(ii).

11. This definition was compiled by the Northern Ireland Regional Steering Group on Domestic Violence.

12. 2007 Annual Report, chapter 10, pp.190-194.

I was informed in May 2008 that the PSNI domestic incidents policy remained unpublished. This meant that ten months after the planned issue date, PSNI officers, including the PSNI's specialist domestic abuse officers, had not had sight of the new policy. At a meeting which I held with PSNI specialist domestic abuse officers in June 2008, the officers confirmed that the delay in issuing the new policy was causing confusion and uncertainty. I am critical of this unacceptable delay in issuing the new PSNI domestic incidents policy. The policy provides necessary instructions and guidance to officers on how to deal with domestic incidents, from initial response to investigation to providing support and advice to victims. The PSNI finally published its domestic incidents policy on 31 July 2008. The Policing Board will monitor the steps taken by the PSNI to ensure that all officers are aware of and understand the new policy as part of its Human Rights Thematic on Domestic Violence against Women.

### Domestic violence involving PSNI officers and staff

The PSNI policy on domestic violence involving PSNI officers and staff<sup>13</sup> states that the PSNI will take positive action to prevent domestic violence and refer police personnel for support to overcome abuse and indicates that the PSNI will investigate and hold officers and staff who perpetrate domestic violence accountable, indicating that they will be treated the same as non police perpetrators.<sup>14</sup> The Policing Board will be investigating the operation of the PSNI policy on domestic violence involving PSNI officers and staff as part of its Human Rights Thematic on Domestic Violence against Women.

### MARAC model

In our 2007 Annual Report, we reported at some length on the PSNI's pilot<sup>15</sup> of the Multi-Agency Risk Assessment Conference (MARAC) model, a multi-agency approach to domestic violence based on risk assessment and inter-agency working and information sharing.<sup>16</sup> The MARAC model is due to be extended across Northern Ireland. Again, the Policing Board will examine and assess the application and impact of the MARAC model as part of its Human Rights Thematic on Domestic Violence against Women.

13. General Order No. 20/07.

14. Officers or police staff who are subject to a court order relating to domestic violence or domestic violence related criminal offences must notify their DCU Commander or Head of Branch. In cases involving an arrest, report or charge in relation to a domestic violence related offence, PSNI Professional Standards, the regional ACC and the Deputy Chief Constable must also be notified. Following notification of criminal allegations, a risk assessment must be conducted in which the employing DCU Commander or Head of Branch considers whether to suspend the individual or give them alternative duties

15. The pilot of the MARAC model was conducted in Larne, Carrickfergus, Antrim and Ballymena districts.

16. 2007 Annual Report, chapter 10, p.195.

### PSNI domestic violence training

As part of last year's monitoring work, we reviewed the PSNI student officer training on domestic violence.<sup>17</sup> Overall, we concluded that the training was focused and practical. However, we observed some inconsistencies in the use of terminology and definitions which we brought to the attention of the PSNI internal evaluation team.<sup>18</sup> I report on the work of the internal evaluation team in chapter 2 of this report. The internal evaluation team has not yet evaluated the PSNI student officer training on domestic violence. The Policing Board intends to review both general and specialist domestic violence training provided to officers as part of its Human Rights Thematic on Domestic Violence against Women.

### HATE CRIME

Hate crime is defined as any hate incident, which constitutes a criminal offence, perceived by the victim or any other person, as being motivated by prejudice or hate. This definition has been adopted by ACPO and the PSNI. Our 2006 and 2007 Annual Reports noted that the level of hate crime in Northern Ireland is increasing. Table 2 below sets out the number of reported incidents and clearance rates of hate crime (by type) for 2006/2007 and 2007/2008.<sup>19</sup>

In 2006/2007, a total of 3,113 incidents of hate crime were reported. This figure decreased in 2007/2008, with 2,844 incidents reported. These figures must be treated with caution in two respects. First, hate incidents and crimes continue to be significantly under-reported to the PSNI. Second, the figures provide only a general indication of the overall number of reported hate crime incidents because some incidents may be classified as having more than one type of motivation and others may be incorrectly classified.

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17. 2007 Annual Report, chapter 10, pp.197-199.

18. 2007 Annual Report, chapter 10, p.199.

19. PSNI Annual Statistical Report No. 3, Hate Incidents and Crimes 1 April 2007 – 31 March 2008.

**Table 2:**

Hate incidents, recorded crimes and clearance rates, 2006-2008

Type of hate crime	Total number of incidents		Total number of crimes		Sanction clearance rate (%)		Non sanction clearance rate <sup>20</sup> (%)		Overall clearance rate (%)	
	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08	06/07	07/08
<b>Racist</b>	1,047	976	861	757	11.7	11.4	1.6	0	13.4	11.4
<b>Homophobic</b>	155	160	117	114	15.4	15.8	7.7	0	23.1	15.8
<b>Faith/Religion</b>	136	68	120	62	6.7	16.1	0.8	0	7.5	16.1
<b>Sectarian</b>	1,695	1,584	1,217	1056	14.4	14.4	2.0	0	16.4	14.4
<b>Disability</b>	48	49	26	42	23.1	11.9	3.8	0	26.9	11.9
<b>Transphobic</b>	32	7	14	4	0	0	0	0	0	0

Table 2 indicates that during 2007/2008, the number of reported racist incidents fell by 71 (-6.8%), the number of reported sectarian<sup>21</sup> incidents fell by 111 (-6.5%), the number of reported transphobic incidents also decreased by 25 (-78.1%) and the number of reported faith/religion<sup>22</sup> incidents decreased by 68 (-50%). The PSNI suggests that it is likely that the huge decrease of 50% in the number of reported faith/religion incidents (and crimes) is due to more accurate recording in 2007/2008. It considers that there was a tendency in previous years for some police officers to mistakenly record these incidents as sectarian incidents. In the same period, reported homophobic incidents rose by 5 (+3.2%) and incidents with a disability motivation rose by 1 (+2.1%).

Table 2 also demonstrates that in 2007/2008, whilst the number of recorded crimes with a disability motivation increased by 16 (+61.5%), there were decreases in all other categories of hate motivation. Recorded racist crimes fell by 104 (-12.1%), homophobic crimes by 3 (-2.6%), faith/religion crimes by 58 (-48.3%), sectarian crimes by 161 (-13.2%) and transphobic crimes by 10 (-71.4%). However, overall clearance rates for recorded racist, homophobic, sectarian and disability hate crime fell during 2007/2008. Only clearance rates for recorded faith/religion crime increased, from 7.5% in 2006/2007 to 16.1% in 2007/2008. Again, non-sanction clearance rates were affected by the change in accounting rules. Sanction clearance rates, however, were unaffected by the change and displayed a similar trend to overall clearance rates in respect of crimes motivated by racism or disability. Only those hate crimes with a homophobic and faith/religion motivation indicated an increase in clearance

20. The Home Office significantly restricted the clearance types available to the police from 1 April 2007 which meant that virtually all clearances resulting in 'no further action' (i.e. non sanction clearances) could no longer be claimed a valid clearance. These clearance types accounted for up to 7.7 percentage points of the PSNI clearance rate for any crime with a hate motivation in 2006/2007 (at 7.7%, crimes with a homophobic motivation had the highest non sanction clearance rate during 2006/2007). However, following this latest restriction there were no clearances of this type for any of the hate motivations during 2007/2008. This means that the PSNI overall clearance rate and its sanction clearance rate are now virtually one and the same.

21. The PSNI's policy on hate incidents indicates that the term 'sectarian' is not clearly defined, however, is used in Northern Ireland to describe incidents of bigoted dislike or hatred of members of a different religious or political group.

22. The PSNI's policy on hate incidents defines a faith or religious group as a group of persons defined by reference to religious belief or lack of religious belief. This would include Christians, Muslims, Hindus, Jews, Sikhs and different sects within a religion. It also includes people who hold no religious belief at all.

rates. Sanction clearance rates for sectarian motivated crimes for the same period remained unchanged. Overall, sanction clearance rates remain low for all categories of hate crime.

Table 3 below records the number of recorded crimes with a hate motivation according to the type of offence in 2007/2008 and indicates that 52% of all recorded hate crime in 2007/2008 was sectarian hate crime. This proportion remains unchanged since 2006/2007. Racist hate crime constituted 37% of recorded hate crime, again the same proportion as in 2006/2007. 48% of recorded hate crimes in 2007/2008 were of criminal damage (down from 50% in 2006/2007), 33% were woundings and assaults (up on 32% in 2006/2007) and 7% were cases of intimidation or harassment, unchanged on the figures for 2006/2007. The most serious recorded hate crimes (i.e. murder and attempted murder) were cases of homophobic and sectarian hate crime.

**Table 3:**

Recorded hate crimes according to type of offence, 2007-2008

Hate motivation/ Type of offence	Racist	Homophobic	Faith/ Religion	Sectarian	Disability	Total
<b>Murder</b>	0	1	0	0	0	<b>1</b>
<b>Manslaughter</b>	0	0	0	0	0	<b>0</b>
<b>Attempted Murder</b>	0	0	0	3	0	<b>3</b>
<b>Threat or conspiracy to murder</b>	20	3	2	43	0	<b>68</b>
<b>All woundings/assaults</b>	204	53	21	367	17	<b>662</b>
<b>Intimidation/harassment</b>	50	17	7	60	3	<b>137</b>
<b>Robbery</b>	9	2	1	7	1	<b>20</b>
<b>Other violent crime</b>	0	2	0	2	5	<b>9</b>
<b>Burglary</b>	15	1	1	16	4	<b>37</b>
<b>Theft</b>	15	0	3	19	2	<b>39</b>
<b>Criminal damage</b>	438	35	27	468	9	<b>977</b>
<b>All other notifiable offences</b>	6	0	0	71	1	<b>78</b>
<b>Total</b>	<b>757</b>	<b>114</b>	<b>62</b>	<b>1,056</b>	<b>42</b>	<b>2,031</b>

## PSNI recording and monitoring of hate crime

In our 2007 Annual Report, we reported concerns raised with us that operational officers were not applying the correct definition of hate crime, i.e. as based on the victim's perception, and referred to anecdotal accounts of cases where the PSNI had failed to pursue crimes perceived by victims as hate motivated. We therefore made the recommendation that the PSNI should require all Minority Liaison Officers (now Hate Incident Minority Liaison Officers) to review command and control logs on a monthly basis as a matter of standard practice to identify incidents which may constitute hate incidents and crimes but which may not be recorded as such.<sup>23</sup>

The PSNI policy on hate incidents<sup>24</sup> was revised and reissued to officers in March 2008. In its introductory statement, the policy explicitly states that:

“Police officers cannot decide whether or not to record or investigate a hate incident or crime because there appears to be no evidence to support a perception. Officers will accept the perception-based view of the victim of any other person.

... It must be clearly understood that to report a hate incident, *evidence* is not needed. Perception on the part of anyone is all that is required...”<sup>25</sup>

The policy expressly reminds officers that when they are recording hate incidents on command and control, it is essential that they enter the appropriate codes (which are set out in the policy) to ensure that the incident is properly recorded.<sup>26</sup> Supervisors<sup>27</sup> are required, where practicable, to attend all reported hate incidents,<sup>28</sup> to check that command and control entries are fully completed, with the appropriate codes applied,<sup>29</sup> and to notify Hate Incident Minority Liaison Officers (HIMLOs) of the command and control serials for all recorded hate incidents at the end of duty.<sup>30</sup>

The policy confirms that specialist HIMLOs will operate in each police district and requires officers to inform HIMLOs of all hate incidents and of the progress of investigations.<sup>31</sup> The revised policy includes within the role of HIMLOs the requirement to keep a record log of all hate incidents and details of action taken by the HIMLO. The policy refers to Recommendation 29 of our 2007 Annual Report and requires HIMLOs to review command and control logs on a monthly basis as a matter of standard practice to identify incidents which may constitute hate incidents and crimes, but which may not be recorded as such. These new requirements were highlighted to HIMLOs at a recent conference organised by PSNI Community Safety Branch.<sup>32</sup>

23. 2007 Annual Report, Recommendation 29.

24. PD 02/06, Police Response to Hate Incidents, 20 March 2008 (PSNI hate incident policy).

25. PSNI hate incident policy, ss.2(1)(a) and (d).

26. PSNI hate incident policy, s.7, para.2(4).

27. The duty sergeant.

28. PSNI hate incident policy, s.7, para.1(2)(b).

29. PSNI hate incident policy, s.7, para.6(1)(j).

30. PSNI hate incident policy, s.7, para.6(1)(l).

31. PSNI hate incident policy, s.7, para.4(10).

32. Letter PSNI Criminal Justice to Policing Board's human rights advisor dated 22 August 2008.

I am satisfied that the PSNI has taken steps to address our concern that hate incidents may not always be recorded accurately by officers. The review roles of both supervisors and HIMLOs should ensure more accurate recording of hate incidents. Against that background, I consider Recommendation 29 of our 2007 Annual Report to be implemented in full.

### Standardisation of definitions of hate crime

In our 2007 Annual Report, we reported that concerns had been raised with us regarding the PSNI's interaction with other agencies and that it had been suggested, in particular, that the PSNI and Public Prosecution Service (PPS) policies on hate crime should adopt standard definitions. We therefore recommended that the PSNI should work with the PPS to agree standard definitions and policies and a more integrated approach to the prosecution of hate crime.<sup>33</sup>

As I noted earlier in this section, the PSNI use the same definition of hate crime as ACPO for the recording and investigation of hate incidents. Common definitions have been agreed in England and Wales between ACPO, the Crown Prosecution Service and the Court Service. The Northern Ireland Office Community Safety Unit is currently working with the PSNI, the PPS and the Northern Ireland Court Service to agree similar changes in Northern Ireland.<sup>34</sup> This is critical to enable a more integrated approach to the investigation and prosecution of hate crime. Whilst I consider Recommendation 30 of our 2007 Annual Report to be implemented in full, I urge the PSNI to pursue the necessary changes with its partner agencies so that a common definition is adopted as soon as possible. The Policing Board will monitor progress over the coming months.

The Policing Board will continue to monitor the PSNI's recording and investigation of hate incidents and its clearance rates for hate crime as part of its annual human rights compliance assessment. However, it also intends in the future to conduct a more in-depth, focused examination into particular aspects of the PSNI's approach to tackling hate crime in a human rights thematic.

### MINORITY COMMUNITIES PERCEPTIONS OF THE PSNI<sup>35</sup>

Since 2006, we have consulted with representatives of the Northern Ireland Council for Ethnic Minorities (NICEM), The Rainbow Project<sup>36</sup> and An Munia Tober<sup>37</sup> to discuss the effectiveness of partnership working with the PSNI

33. 2007 Annual Report, Recommendation 30.

34. Letter PSNI Criminal Justice to Policing Board's human rights advisor dated 22 August 2008.

35. Based on meetings with groups outlined. We do not intend to suggest there are not other perceptions held.

36. The Rainbow Project aims to address the physical, mental and emotional health of gay and bisexual men in Northern Ireland.

37. The main Irish Travellers support program in Belfast, An Munia Tober provides a variety of services to the Irish Traveller community.



and perceptions of the PSNI's awareness and understanding of the needs of particular minority groups. I met with representatives of NICEM, An Munia Tober and the Rainbow Project again this year as part of my monitoring work. I set out the matters and concerns they raised with me in the next sections.

### **PSNI engagement with minority ethnic communities**

I met with the Director of NICEM in August 2008. He expressed continuing concern that operational officers were not applying the PSNI definition of hate crime and gave examples of cases where the PSNI had failed to identify and record incidents as hate motivated despite the clear perceptions of victims. There continued to be a perceived gap between PSNI policy and practice. NICEM reported lower levels of satisfaction of victims regarding the PSNI response to hate incidents, especially race hate incidents<sup>38</sup> and highlighted its very serious concern that this reduction in confidence had resulted in reduced reporting of hate incidents at a time when it appeared that the occurrence of hate incidents was increasing.

NICEM also reported reticence on the part of some PSNI officers to provide interpreters for minority ethnic detainees due to the costs involved and stated that this must be addressed as a requirement under the European Convention on Human Rights (ECHR) Article 6 (right to a fair trial) rather than perceived as a luxury. NICEM recognised the PSNI's commitment to providing interpretation and translations services and emphasised that it is important that the PSNI continues to make available translated literature/information for non-native English speakers. NICEM also raised similar concerns regarding immigration detainees as those discussed in chapter 11 of this report.

### **PSNI engagement with the lesbian, gay, bisexual and transgender community**

I met with the Chair of the Board of Directors of the Rainbow Project in July 2008. We discussed the operation against unlawful public sexual activity reported in chapter 4 of our 2007 Annual Report. Like NICEM, The Rainbow Project reported a gap between PSNI policy and practice and emphasised that in such operations the PSNI should consult with local lesbian, gay, bisexual and transgender (LGBT) groups during the planning stages of the operations and should provide details of local support groups to individuals arrested as a result of such operations.

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<sup>38</sup>. Reflected in the PSNI quality of service survey which is discussed at the end of this chapter.

The Rainbow Project referred to the 2006 report by the Institute for Conflict Research<sup>39</sup> which recorded that 18% of 233 respondents to its survey believed that the crime of which they had been a victim was motivated by homophobia.<sup>40</sup>

Like NICEM, The Rainbow Group recorded its concern that PSNI officers were not applying the PSNI definition of hate crime and again, gave examples of cases where the PSNI had failed to identify and record incidents as hate motivated despite the clear perceptions of victims. The Rainbow Project raised concerns that officers were not properly recording homophobic hate incidents on PSNI command and control logs and were not adequately familiar with the PSNI hate incidents policy. Reference was made to a meeting with PSNI senior officers who had acknowledged that a large number of incidents not originally recorded as hate incidents had been so designated following an internal review.

The Rainbow Project reported the establishment of a network of LGBT support groups across Northern Ireland and suggested that the key to addressing negative perceptions of the PSNI's approach to dealing with homophobic hate incidents was through partnership working at local level. The Rainbow Project has recently appointed a policy officer to focus on these issues and work with the Policing Board's LGBT Reference Group and the PSNI's Independent Advisory Group.

### PSNI engagement with the Irish Traveller Community

I met with the Director of An Munia Tober in July 2008 to discuss the recommendations we had made in our 2007 Annual Report relating to the Irish Traveller Community. I report on the comments made by An Munia Tober in the next section of this chapter.

## PSNI APPROACH TO THE IRISH TRAVELLER COMMUNITY

In our 2007 Annual Report, we reported on the Unauthorised Encampment (Northern Ireland) Order 2005 (the 2005 Order) and the PSNI's approach to the 2005 Order.<sup>41</sup> We recorded concerns raised with us regarding whether PSNI officers were aware of the proper scope of their powers under the 2005 Order.<sup>42</sup> We therefore recommended that the PSNI amend its policy<sup>43</sup> and ensure that officers are aware of the terms of the 2005 Order and the proper scope of their powers under it.<sup>44</sup> We also recommended that the PSNI should submit a report to the Policing Board on a six-monthly basis setting out the number of police orders issued under the 2005 Order and a short summary of the circumstances relating

39. Commissioned by the Policing Board and the Police Ombudsman.

40. Policing, Accountability and the Lesbian, Gay and Bisexual Community in Northern Ireland, Institute for Conflict Research, 2006.

41. 2007 Annual Report, chapter 10, pp.208-209.

42. Specifically that police may not remove an unauthorised encampment by Irish Travellers unless there is an alternative suitable site or one of the conditions in Article 3 of the 2005 Order applies.

43. To emphasise that an unauthorised encampment by Irish Travellers may not be removed unless a suitable alternative site is available or Article 3 of the Unauthorised Encampment (Northern Ireland) Order 2005 applies.

44. 2007 Annual Report, Recommendation 31.

to each order to allow us to monitor the exercise of police powers under the 2005 Order.<sup>45</sup> Both these recommendations were accepted by the PSNI.<sup>46</sup>

### PSNI policy on unauthorised encampments

The PSNI policy on unauthorised encampments<sup>47</sup> has been revised and was reissued in May 2008. The policy now clearly sets out police powers under the 2005 Order. The policy instructs officers that comprehensive records must be kept, evidencing the necessity and proportionality of any decision-making process carried out prior to effecting a removal under the order<sup>48</sup> and requires officers making decisions in relation to unauthorised encampments to submit a return to the Hate Incident and Minority Liaison Officer (HIMLO) through their District Commander.<sup>49</sup> The Appendix providing guidance on recording the decision-making process expressly requires officers to identify the human rights engaged and to set out the aims and justification of the police action taken. Officers are also required to identify equality considerations and to justify any difference in treatment of particular groups.<sup>50</sup>

The revised policy meets the concerns that we recorded in our 2007 Annual Report. An Munia Tober also reported an increased awareness by PSNI officers of their powers under the 2005 Order. Against that background, I consider Recommendation 31 of our 2007 Annual Report to be implemented in full.

### Directions issued under the Unauthorised Encampment (Northern Ireland) Order

The PSNI has provided me with details of the police directions issued under the Unauthorised Encampment (Northern Ireland) Order (the 2005 Order). Table 4 below sets out the number of directions issued by the PSNI in the period 1 April 2007 to 31 March 2008. There was a total of four police directions issued over the period.<sup>51</sup>

45. 2007 Annual Report, Recommendation 32.

46. PSNI Human Rights Programme of Action 2007-2008, pp.6-7.

47. SP 19/2007 PSNI Service Procedure, Unauthorised Encampments (Northern Ireland) Order 2005, 20 May 2008 (Unauthorised Encampments policy).

48. Unauthorised Encampments policy, s.8(5)(d).

49. Unauthorised Encampments policy, s.8(5)(e).

50. Unauthorised Encampments policy, Appendix D.

51. Letter ACC Criminal Justice to Policing Board's human rights advisor dated 3 June 2008.

**Table 4:**

Number of directions issued by the PSNI under the 2005 Order,  
1 April 2007-31 March 2008

Month/Year	No. of Encampments	Direction issued
April 2007	1	No
May 2007	0	
June 2007	0	
July 2007	3	No (all cases)
August 2007	8	Yes x 1 case
September 2007	2	Yes x 1 case
October 2007	0	
November 2007	1	No
December 2007	5	Yes x 1 case
January 2008	2	No (all cases)
February 2008	4	Yes x 1 case
March 2008	4	No (all cases)

I have discussed the PSNI's use of its powers under the 2005 Order with the Director of An Múna Tober, who was aware of the four cases where a police direction was issued. He stated that he had received no complaints regarding police actions and indicated that, whilst he had identified some inconsistency in PSNI officers' responses to unauthorised encampments, he was generally satisfied with the PSNI's exercise of its powers under the 2005 Order.

Against that background, I consider Recommendation 32 of our 2007 Annual Report to be implemented in full but remind the PSNI of its continuing obligation to report to the Policing Board on a six-monthly basis the number of police orders issued under the 2005 Order and a short summary of the circumstances relating to each order.

### PSNI cultural awareness training

In our 2007 Annual Report, we recorded that we had been informed that organisations representing the Irish Traveller community were not included in the PSNI's cultural awareness training to student officers. We recommended that the PSNI ensure that the Traveller community is represented in its cultural awareness training to PSNI student officers.<sup>52</sup> The PSNI extended an invitation to An Múna

52. 2007 Annual Report, Recommendation 33.

Tober to attend the PSNI Community Fair event that is held every five weeks in the College.<sup>53</sup> I understand that An Munia Tober declined to attend the event. I hope An Munia Tober or another representative Irish Traveller organisation will attend the PSNI Community Fair in the future. The PSNI has informed me that the Diversity Unit in 'A' District is working with An Munia Tober to develop on-site training sessions run by An Munia Tober. In addition, PSNI Community Safety branch is producing an awareness DVD which is due to be launched during Travellers Awareness Week at the beginning of December 2008.<sup>54</sup>

Against this background, I consider Recommendation 33 of our 2007 Annual Report to be implemented in full.

### **Irish Traveller liaison officer**

Last year, we reported that a number of police forces in England and Wales and An Garda Síochána had appointed dedicated Traveller liaison officers and we recommended that the PSNI should consider appointing a dedicated Traveller liaison officer.<sup>55</sup> In its Programme of Action 2007-2008, the PSNI indicated that an officer within PSNI Community Safety had the responsibility to act as Traveller liaison officer. The officer also acts as a liaison for minority groups, including minority ethnic groups, LGBT groups, older persons and disability groups.<sup>56</sup>

I have discussed the PSNI's response to this recommendation with the Director of An Munia Tober. He indicated that he is satisfied with the approach which the PSNI has adopted and reported that the officer currently acting as Traveller liaison within PSNI Community Safety is dedicated and accessible. I therefore consider Recommendation 34 of our 2007 Annual Report to be implemented in full.

## **TRAINING ON VICTIMS**

In our 2007 Annual Report, we reported that the PSNI was making great efforts to ensure that its student officer training on victims was comprehensive and that the training of PSNI specialist officers appointed to support particular victim groups was pertinent and focused. However, we noted minor concerns regarding the training for student officers. I discuss the PSNI's response in relation to its student officer training below.

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53. Email Police College to Policing Board's human rights advisor dated 20 August 2008.

54. Email Police College to Policing Board's human rights advisor dated 22 August 2008.

55. 2007 Annual Report, Recommendation 34.

56. PSNI Human Rights Programme of Action 2007-2008, p.7.

## Student officer training on victims

In our 2007 Annual Report, we set out our observations of the student officer training on victims and vulnerable witnesses and noted a number of concerns. We recommended that the PSNI internal evaluation team should evaluate the PSNI's student officer training on victims and witnesses taking into account the concerns we had identified.<sup>57</sup> I discuss the activities of the PSNI internal evaluation team in detail in chapter 2 of this report and the difficulties it has experienced over the last year. The internal evaluation team has not yet conducted an evaluation of the student officer training on victims and vulnerable witnesses. I therefore consider that Recommendation 35 of our 2007 Annual Report remains outstanding and urge the PSNI internal evaluation team to conduct this evaluation as a matter of priority.

## SATISFACTION LEVELS OF VICTIMS

During 2007, the PSNI again conducted a Quality of Service Survey in conjunction with the Policing Board.<sup>58</sup> The survey monitors the quality of the service provided by the PSNI to victims of violent crime, vehicle crime, domestic burglary, racist incidents and road traffic collisions. During 2006/2007, 9,636 questionnaires were sent to a random sample of such victims for the period 1 April 2006 to 31 March 2007.<sup>59</sup> 2,065 questionnaires were returned, resulting in a response rate of 21.4% as compared to 23.9% in 2005/2006. I set out the key findings of the survey, compared against last year's findings, in Tables 5 to 7 below.

The three tables demonstrate that victims' satisfaction with police performance remains at a consistently high level. Just under four fifths of respondents (78%) in 2006/2007 indicated that they were satisfied with the overall service provided by the police. This compares with a figure of 81% during 2005/2006. The level of satisfaction was significantly higher among respondents who were victims of road traffic collisions (89%) than all other victim groups, with those who were victims of racist incidents indicating the lowest levels of satisfaction (68%). This represents a continuing downward trend in satisfaction levels experienced by this victim group, from 77% in 2004/2005 and 75% in 2005/2006. This correlates with experiences of victims of racist and homophobic hate crimes reported to me by NICEM and The Rainbow Project.

The overall level of satisfaction was significantly lower among males (76%) than females (81%). Persons aged 16-34 (71%) also had a significantly lower satisfaction compared with other age groups. There was little variation in the level of satisfaction by community background or policing area.

57. 2007 Annual Report, Recommendation 35.

58. This survey was first conducted in 2004/2005. The survey monitors victim/user satisfaction in terms of the following (a) first contact, (b) police actions to deal with the incident, (c) follow up and being kept informed, (d) treatment by police staff and (e) the whole experience and overall service.

59. The surveys are conducted on a quarterly basis in order to ensure that the service experienced by the respondent is within a few months of receipts of the questionnaire.

**Table 5:**

Overall level of satisfaction by key areas of policing service, 2005-2007

Type of Service	Percentage of respondents indicating satisfaction <sup>60</sup> with PSNI performance	
	2005/2006	2006/2007
Ease of contact	90	91
Time for police to arrive	85	86
Actions taken by police	77	75
Kept informed of process	70	70
Treatment by police	88	87
<b>Overall service</b>	<b>81</b>	<b>78</b>

**Table 6:**

Satisfaction of victims with overall service provided by PSNI, 2005-2007

Victim Type	Completely/Very/Fairly Satisfied (%)		Completely/Very Satisfied (%)	
	2005/2006	2006/2007	2005/2006	2006/2007
Domestic Burglary	89	83	69	64
Violent Crime	67	70	45	51
Vehicle Crime	72	73	54	51
Road Traffic Collision	89	89	74	72
Racist Incident	75	68	48	51
<b>Overall</b>	<b>81</b>	<b>78</b>	<b>61</b>	<b>59</b>

60. The level of satisfaction is the proportion of respondents stating that they were completely/very/fairly satisfied.

**Table 7:**

Satisfaction with overall service provided by PSNI by age, gender and community background of victim, 2005-2007

Victim type	Completely/Very/Fairly Satisfied (%)		Completely/Very Satisfied (%)	
	2005/2006	2006/2007	2005/2006	2006/2007
Male	76	76	57	57
Female	85	81	66	61
16-34	71	71	47	49
35-44	81	81	58	58
45-54	81	80	66	62
55+	89	85	76	71
Protestant	81	78	61	59
Roman Catholic	80	80	62	60
Urban	80	78	60	58
Rural	81	79	63	60
<b>Overall (%)</b>	<b>81</b>	<b>78</b>	<b>61</b>	<b>59</b>

Tables 8 and 9 set out the level of satisfaction of respondents with the actions taken by police. Table 5 demonstrates that three quarters of respondents (75%) stated that they were satisfied with the actions taken by police in 2006/2007. This was only a small reduction on the 2005/2006 figure of 77%. Again, the level of satisfaction was significantly higher among respondents who were victims of a domestic burglary (84%) and those who were involved in road traffic collisions (85%) than the other victim groups. Those aged 16-34 (66%) expressed significantly lower satisfaction with the actions taken by the police compared with the other age groups.



**Table 8:**

Levels of Satisfaction of victims with actions taken by police, 2005-2007

Victim type	Completely/Very/Fairly Satisfied (%)		Completely/Very Satisfied (%)	
	2005/2006	2006/2007	2005/2006	2006/2007
Domestic Burglary	86	84	68	67
Violent Crime	61	68	42	49
Vehicle Crime	66	67	46	47
Road Traffic Collision	86	85	72	67
Racist Incident	71	67	40	51
<b>Overall (%)</b>	<b>77</b>	<b>75</b>	<b>58</b>	<b>57</b>

**Table 9:**

Levels of satisfaction with the actions taken by police by gender, age, community background and policing area of victim, 2005-2007

Victim type	Completely/Very/Fairly Satisfied (%)		Completely/Very Satisfied (%)	
	2005/2006	2006/2007	2005/2006	2006/2007
Male	73	74	54	55
Female	80	77	63	58
16-34	66	66	44	46
35-44	77	76	56	54
45-54	77	81	59	62
55+	87	85	74	71
Protestant	77	76	60	57
Roman Catholic	76	76	57	58
Urban	76	75	58	56
Rural	77	76	59	59
<b>Overall (%)</b>	<b>77</b>	<b>75</b>	<b>58</b>	<b>57</b>

Table 10 sets out the levels of victims' satisfaction with the way they were treated by police officers and police staff. The table indicates that while the vast majority of respondents (87%) in 2006/2007 stated that they were satisfied with the way they were treated, the level of satisfaction of victims of racist incidents has fallen sharply from 91% in 2005/2006 to 75% in 2006/2007. Although the number of respondent victims may be small, this is a cause for concern.

**Table 10:**

Levels of satisfaction with treatment by officers and staff, 2004-2007

Victim type	Completely/Very/Fairly Satisfied (%)			Completely/Very Satisfied (%)		
	2004/2005	2005/2006	2006/2007	2004/2005	2005/2006	2006/2007
Domestic Burglary	94	94	93	80	84	81
Violent Crime	84	78	83	63	60	65
Vehicle Crime	83	83	85	64	67	68
Road Traffic Collision	93	91	91	80	81	77
Racist Incident	86	91	75	62	64	62
<b>Overall (%)</b>	<b>89</b>	<b>88</b>	<b>87</b>	<b>72</b>	<b>74</b>	<b>72</b>

### Reporting anti-social behaviour

From 1 April 2006, the Government introduced a new requirement for police services to measure satisfaction levels amongst persons who report anti-social behaviour. Home Office guidelines recommend that the results of this survey are reported separately in order to monitor the impact that this new group has on overall satisfaction measures. During 2006/2007, 2,647 questionnaires were sent to a random sample of persons who had reported anti-social behaviour. 781 questionnaires were returned, resulting in a response rate of 29.5%. The key findings of this survey are presented in tables 11 to 13 below.

The tables indicate that over two-thirds of respondents (70%) indicated that they were satisfied with the overall service provided by the police for 2006/2007. Those aged 55 and over (75%) expressed significantly higher satisfaction than the 45-54 age group (64%). Approximately two-thirds of respondents (65%) also stated that they were satisfied with the actions taken by police. Almost four-fifths of respondents (79%) stated that they were satisfied with the way they were treated by the police officers and staff that dealt with them. However, only 47% of all respondents who had further contact with the police were satisfied with how they were kept informed of progress.

**Table 11:**

Satisfaction of individuals reporting anti-social behaviour with overall service provided by PSNI, 2006-2007

Victim type	Completely/Very/ Fairly Satisfied (%)	Completely/Very Satisfied (%)
Male	69	48
Female	71	54
16-34	68	48
35-44	69	47
45-54	64	52
55+	75	56
Protestant	70	50
Roman Catholic	73	56
Urban	69	48
Rural	71	55
<b>Overall</b>	<b>70</b>	<b>52</b>

**Table 12:**

Satisfaction of individuals reporting anti-social behaviour with actions taken by PSNI, 2006-2007

Victim type	Completely/Very/Fairly Satisfied (%)	Completely/Very Satisfied (%)
Male	61	42
Female	67	47
16-34	60	40
35-44	64	41
45-54	63	43
55+	69	51
Protestant	64	45
Roman Catholic	68	48
Urban	64	41
Rural	65	48
<b>Overall</b>	<b>65</b>	<b>45</b>

**Table 13:**

Satisfaction of individuals reporting anti-social behaviour with treatment by PSNI officers and staff, 2006-2007

Victim/user type	Completely/Very/Fairly Satisfied (%)	Completely/Very Satisfied (%)
Male	78	58
Female	79	64
16-34	78	57
35-44	74	54
45-54	77	59
55+	82	68
Protestant	80	60
Roman Catholic	79	65
Urban	79	61
Rural	78	62
<b>Overall</b>	<b>79</b>	<b>61</b>

## FUTURE MONITORING WORK

In the future, the Policing Board intends to conduct more detailed scrutiny of specific matters or problems facing particular victim groups through its human rights thematics.



# Chapter 11: TREATMENT OF SUSPECTS

Detained suspects are particularly vulnerable to human rights infringements. In this year's annual report, I continue to monitor both the treatment of detainees and the conditions of their detention. I address issues affecting designated as well as non-designated detention cells and give particular attention to issues surrounding vulnerable persons in custody. Further to concerns raised in our 2007 Annual Report regarding immigration and ethnic minority detainees, I return to this area in my 2008 Annual Report.

# 11

## INDEPENDENT CUSTODY VISITING SCHEME

In 2001, the Policing Board established the Independent Custody Visiting Scheme. Pursuant to s.73 of the Police (Northern Ireland) Act 2000, implementing Patten Recommendation 64, a Government Order gave custody visitors the power to observe interviews with detained suspects on camera. In his final report (Report 19), published in May 2007, the Oversight Commissioner confirmed that Patten Recommendation 64 had been implemented in full.

The Policing Board's Independent Custody Visiting Scheme fulfils a valuable function in ensuring the protection of the human rights of detained suspects. The custody visitors are volunteers from the community who make unannounced visits to designated police custody suites and report on the welfare and treatment of persons detained. Our 2005, 2006 and 2007 Annual Reports documented the activities of the custody visiting teams. The custody visiting teams conduct a significant number of visits on an annual basis. Between April 2007 and March 2008, 1,149 visits were carried out. Often, visits are conducted at weekends and during anti-social hours. Again, in this year's Annual Report, I would like to commend the dedication of the custody visitors.

There are four custody visiting teams operating across Northern Ireland, visiting 23 PSNI designated custody suites.<sup>1</sup> Representatives from the Belfast/Antrim team also conduct visits to Antrim Serious Crime Suite. Visits are made to detainees held under the Police and Criminal Evidence (Northern Ireland) Order 1989, the Terrorism Act 2000, the Justice and Security Act 2007 and the Immigration Act 1971.

### Number of custody visits 2007-2008

As with our 2005, 2006 and 2007 Annual Reports, I have this year again reviewed the number of visits made by each of the custody visiting teams against annual guidelines set by the Policing Board. Guidelines for numbers of visits are not strict and have been the subject of ongoing revision since last year due to a number of custody suite closures. Given this context, no negative inference should automatically be drawn from a custody visiting team's inability to meet the annual guideline. I set out the results in Table 1 below.

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1. Article 36 of the Police and Criminal Evidence (Northern Ireland) Order 1989 requires the Chief Constable to designate the police stations which are to be used for the purpose of detaining arrested persons.

**Table 1:**

Number of visits per custody visiting team, 2007-2008

Custody visiting team	Guideline <sup>2</sup> number of visits for 2007/2008	Actual number of visits in 2007/2008
Belfast/Antrim <sup>3</sup>	487	474
Down/Armagh	265	284
North-West	188	161
Tyrone/Fermanagh	188	204
Antrim SCS	28	26
<b>Total</b>	<b>1,156</b>	<b>1,149</b>

In 2007/2008, custody visitors made a total of 1,149 visits to designated police custody suites across Northern Ireland, a 1% increase on the 1,134 visits carried out between April 2006 and March 2007. 1,127 of those visits were considered to be valid (98%).<sup>4</sup> Custody visitors classified 724 out of the 1,127 valid visits (64%) as satisfactory.<sup>5</sup> The level of satisfaction varied from team to team with the Belfast/Antrim team recording the lowest level of satisfaction in relation to visits to Antrim Serious Crime Suite (31%) whilst both the North-West and Tyrone/Fermanagh teams recorded the highest levels of satisfaction (75%). The reasons for concern are set out at Tables 5 and 6 below.

Between April 2007 to March 2008, 22 visits (2%) were aborted. The most common reasons for the aborted visits were one of the two custody visitors failing to attend, custody suites being too busy or custody suites being closed for refurbishment. During my meeting with custody visiting team representatives in July 2008, custody visitors reported that they were not notified when designated custody suites were closed for refurbishment, nor when they were subsequently re-opened. This has been a recurrent theme over the last two years.

PSNI Service Procedure on custody visitors<sup>6</sup> states that “[t]emporary closure of custody suites that result in no detainees being held should be circulated as soon as possible to all police via email for the information of operational police and in order that [PSNI] Operational Support Department staff can notify the Custody Visiting Scheme Administrator accordingly.”<sup>7</sup> Without making a formal recommendation, I remind the PSNI that it should ensure that it notifies the Policing Board when a custody suite is closed for refurbishment and when it is re-opened to allow the Board to provide this information to the relevant custody visiting teams. The Policing Board will continue to monitor this matter.

2. The guideline number of visits is based on the number of detainees held in each custody suite: the busier a custody suite, the more visits it should receive. The guideline number of visits was revised in June 2006 and again in June 2007 to reflect custody suites closures over the period.  
3. Figures correspond to activity of Belfast/Antrim team, excluding figures to Antrim Serious Crime Suite.  
4. Visits are not valid if custody visitors are unable to gain access to custody suites due to closure or other reason.

5. Satisfactory visits are those visits where no issues or concerns regarding either treatment of detainees or conditions of detention are reported by custody visitors.  
6. SP 40/2006, Custody Visitors, reissued 8 May 2008 (PSNI custody visitor procedure).  
7. PSNI custody visitor procedure, para.8(5).



## Days and times of visits, 2007-2008

In response to concerns raised by the custody visitors in 2006 about the requirement that a certain number of visits should be conducted between midnight and 6.00am and our subsequent recommendation that the Policing Board review its guidelines for these visits, custody visitors are now requested to make a certain number of visits between midnight and 9.00am. This ensures that custody visitors are able to meet with detainees held overnight, while at the same time addressing custody visitors' concerns about personal safety.<sup>8</sup>

In 2005/2006, custody visitors conducted 21% of visits at weekends and 9% of visits during anti-social hours. The number of visits conducted in 2006/2007 at weekends increased to 24%, whilst those conducted during anti-social hours fell slightly to 8%. In 2007/2008, both of those figures fell by 2%, to 22% (258 visits) and 7% (77 visits) respectively. Just under two thirds (64%) of the 1,149 visits (738) were carried out between Mondays and Thursdays, and just over one third (36%) of visits (411) were carried out between Fridays and Sundays. Most visits were made on Tuesdays (216) whereas the least number of visits were made on Saturdays (111). The average length of visits was 28 minutes. The shortest visit took just three minutes while the longest took 156 minutes. Only 9% (106) of all valid visits took 10 minutes or less.

### Table 2:

#### Days of visits 2007-2008

Day of the week	Annual Total	Percentage of total
Monday	172	15
Tuesday	216	19
Wednesday	167	14
Thursday	183	16
Friday	153	13
Saturday	111	10
Sunday	147	13
<b>Total</b>	<b>1,149</b>	<b>100</b>

8. Submission from Policing Board's Service Monitoring branch dated 23 May 2007.

**Table 3:**

Times of visits 2007-2008

Time	Annual Total	Percentage of total
00:00-09:00	77	7
09:00-12:00	220	19
12:00-15:00	193	17
15:00-18:00	241	21
18:00-21:00	328	28
21:00-24:00	90	8
<b>Total</b>	<b>1,149</b>	<b>100</b>

**Custody visiting team activity 2007-2008**

Table 4 sets out the number of valid visits by each custody visiting team in 2007/2008, with details of the number of detainees held at the time of the visit, the number of detainees seen by the custody visitors, the number who refused to be seen and the number not seen for another reason.

**Table 4:**

Custody visiting team activity 2007-2008

Custody visiting team	No. of valid visits	Detainees held	Detainees seen	Detainees who refused to be seen	Detainees not seen for another reason	Refusal rate %
<b>Belfast/Antrim<sup>9</sup></b>	464	1,010	525	194	291	19
<b>Down/Armagh</b>	279	228	85	58	85	25
<b>North-West</b>	157	228	101	69	58	30
<b>Tyrone/Fermanagh</b>	201	136	67	32	37	24
<b>Antrim SCS</b>	26	16	7	4	5	25
<b>2007-2008 Total</b>	<b>1,127</b>	<b>1,618</b>	<b>785</b>	<b>357</b>	<b>476</b>	<b>22</b>
<i>2006-2007 Total</i>	<i>1,134</i>	<i>1,506</i>	<i>818</i>	<i>327</i>	<i>361</i>	<i>22</i>
<i>2005-2006 Total<sup>10</sup></i>	<i>1,178</i>	<i>1,370</i>	<i>702</i>	<i>314</i>	<i>354</i>	<i>23</i>

As the table demonstrates, 1,618 detainees were held during the 1,127 valid custody visits and custody visitors saw 785 (49%) of those detained. 357 (22%) detainees refused to be seen by custody visitors and 476 (29%) detainees could

9. Figures correspond to activity of Belfast/Antrim team post amalgamation, excluding visits to Antrim Serious Crime Suite.

10. Includes visits to Antrim Serious Crime Unit for the period 1 October 2005-31 March 2006.

not be seen for another reason, such as because they were being interviewed by the police (9%), asleep (9%) or consulting with a solicitor or GP (3%). The refusal rate varied from team to team with the Belfast/Antrim team recording the lowest refusal rate (19%) while the North-West team recorded the highest refusal rate (30%). A comparison with last year's activity indicates that the proportion of detainees seen by the custody visitors has fallen from 54% to 49%, the proportion of detainees refusing visits has remained static at 22% and the number of those who could not be seen for another reason has increased from 24% to 29%.

### **Treatment of detainees and conditions of detention**

In June 2008, we analysed the reports of the custody visitors, noting in particular where concerns were raised in relation to the treatment or condition of detainees. During 2007/2008, custody visitors classified 724 (64%) of all visits as satisfactory. This compares with 75% of visits classified as satisfactory in 2006/2007, 79% in 2005/2006, and 82% in 2004/2005, demonstrating a repeat downward trend year on year. This raises some concerns, most notably in relation to conditions of detention, which I discuss in more detail below.

Tables 5 and 6 indicate the number and types of concerns raised by each custody visitor team regarding the treatment of detainees and conditions of detention over the period. The two tables show that the concerns reported by custody visitors relate overwhelmingly to conditions of detention, rather than treatment, and that, as in 2006/2007, most concerns were reported by the Down/Armagh team, closely followed by the Belfast/Antrim team.

### **Treatment of Detainees**

Table 5 indicates that in 2007/2008, custody visitors raised a total of three complaints about the treatment of detainees. This compares to eight complaints regarding the treatment of detainees in 2006/2007, the majority of which concerned the PSNI's failure to provide adequate food and drink.

The three complaints in 2007/2008 related to the adequacy of checks by custody officers of vulnerable detainees (those identified as at risk of suicide or self-harm). Two of the three complaints were made by the Belfast/Antrim custody team and the third by the Down/Armagh custody team. I discuss concerns regarding vulnerable persons in custody in more detail later in this chapter. No complaints or concerns about the treatment of detainees were raised by the other custody visiting teams.

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Whilst I welcome the very small number of complaints recorded by custody visitors about the treatment of detainees - three complaints arising out of 1,149 visits - the Policing Board will continue to monitor the levels and types of complaints made by custody visitors and the PSNI's response to them.

**Table 5:**

Concerns relating to treatment of detainees, April 2007-March 2008

Reason	Belfast/ Antrim	Down/ Armagh	North- West	Tyrone/ Fermanagh	Antrim SCS	Total
Legal advice	0	0	0	0	0	0
Being told their rights	0	0	0	0	0	0
15 minute checks	2	1	0	0	0	3
Appropriate adult	0	0	0	0	0	0
Interpreter	0	0	0	0	0	0
Review of detention	0	0	0	0	0	0
Bedding	0	0	0	0	0	0
8 hours rest in 24	0	0	0	0	0	0
Exercise	0	0	0	0	0	0
Informing somebody	0	0	0	0	0	0
Adequate food/drink	0	0	0	0	0	0
Dietary needs	0	0	0	0	0	0
Access to toilet/washing	0	0	0	0	0	0
Replacement clothes	0	0	0	0	0	0
Medical attention	0	0	0	0	0	0
Other						
<b>Total</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>

### ***Conditions of Detention***

During 2007/2008, custody visitors raised a significant number of concerns about conditions of detention, reporting a total of 500 instances of concern. These relate to ventilation, cleanliness, safety hazards, sanitation problems, faulty equipment, lighting, heating and alarm malfunction. Table 6 sets out the numbers and types of concern raised by each custody visitor team in 2007/2008.

**Table 6:**

Concerns relating to condition of detention, April 2007-March 2008

Reason	Belfast/ Antrim	Down/ Armagh	North- West	Tyrone/ Fermanagh	Antrim SCS	Total
Heating	2	3	2	0	0	7
Lighting	7	2	1	12	0	22
Ventilation	7	3	0	3	0	13
Alarm	1	2	0	0	0	3
Cleanliness	18	35	8	2	0	63
Safety/security	83	109	16	36	5	249
Sanitation	42	21	1	2	15	81
Faulty equipment	14	7	13	5	2	41
Other	7	5	8	1	0	21
<b>Total</b>	<b>181</b>	<b>187<sup>11</sup></b>	<b>49</b>	<b>61</b>	<b>22</b>	<b>500</b>

As Table 6 demonstrates, by far the largest proportion of concerns raised by all teams relate to safety and security (overall 50%). This is followed by sanitation (16%), cleanliness (13%) and faulty equipment (8%). As in 2006/2007, Down/Armagh custody visiting team recorded the highest number of concerns about conditions of detention, accounting for 187 (37%) of all reports, albeit a slight decline from the 40% recorded in our 2007 Annual Report. The Belfast/Antrim team reported only slightly fewer concerns than the Down/Armagh team of 181 (36%), however, this represented a marked increase on 27% of all concerns raised last year.

I am concerned about the increase - by almost 50% - in the number of concerns raised by the custody visiting teams and also by the continuing concentration of these concerns around safety and security. Although it is clear that concerns raised by the custody visiting teams are being monitored, it is not obvious that remedial action is always being taken promptly by District Commanders, including where concerns involve individuals at risk of harming themselves or others. Nor is it clear that issues raised by custody visiting teams are being risk managed until a review by the PSNI has been completed. The incidents raised by the custody visitors included at least eight reports of potential ligature points and numerous reports of matters which could harm an individual (including 17 reports of medical cabinets being left unlocked, and 23 reports of oxygen bottles failing to be checked).

11. The majority of these concerns related to cleanliness and the presence of a safety hazard.

The PSNI Custody Visitors' Service Procedure was revised and reissued in May 2008. It states that:

- “(a)...Any adverse comments made [by custody visitors] should be risk assessed and actioned accordingly, i.e. issues that can be remedied locally should be attended to as soon as possible, issues that query a Headquarters Policy Directive, Service Procedure, current legislation or the custody infrastructure should be forwarded in all instances via the District Commander to the relevant PSNI Department.
- (b) The custody manager should monitor/audit these reports... and/or actions taken to address concerns raised by the custody visitors. Updates on issues requiring further action should be forwarded to the Custody Visitor Administrator... within four weeks of the initial report.”<sup>12</sup>

In view of the serious nature of a number of the concerns raised by the custody visitors and the harm that could result to individuals if these concerns are not addressed promptly, I remind the PSNI of the duty of care they owe to all detainees under the European Convention on Human Rights (ECHR) Article 2 and make the recommendation that the PSNI should respond promptly to concerns raised by custody visitors and report action taken in response to those concerns to the Policing Board in a timely manner.

#### **Recommendation 25:**

**The PSNI should respond promptly to concerns raised by custody visitors and report action taken in response to those concerns to the Policing Board in a timely manner.**

In addition, it is not clear from Policing Board statistics which of the incidents raised by the custody visitors referred to above remain outstanding and which of those incidents have now been resolved. This means that a more effective system of monitoring outcomes of concerns raised by custody visitors needs to be put in place. Against that background, I recommend that the Policing Board should review its system for monitoring concerns raised by custody visiting teams to ensure first, that the PSNI responds to concerns in a satisfactory and timely manner and second, that action taken by the PSNI is recorded by the Policing Board and communicated to the relevant custody visiting team.

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12. PSNI custody visitor procedure and confirmed by letter ACC Operational Support to Policing Board's human rights advisor dated 18 August 2008.

**Recommendation 26:**

**The Policing Board should review its system for monitoring concerns raised by custody visiting teams to ensure first, that the PSNI responds to concerns in a satisfactory and timely manner and second, that action taken by the PSNI is recorded by the Policing Board and communicated to the relevant custody visiting team.**

In our 2007 Annual Report, we noted the concerns raised by the Northern Ireland Human Rights Commission following its visits to the custody suite at Musgrave Street police station.<sup>13</sup> The Commissioners raised concern about the lack of privacy afforded to detained persons while they were processed by custody suite officers. The Commissioners also expressed concern about the condition of cells, particularly the suitability of cells for detaining children under 18 years, the condition and privacy of the cell allocated specifically for women and the absence of natural light or exercise facilities in the custody suite. The Commissioners indicated that custody suite staff had informed them of a high rate of self harming, depression and stress amongst detained persons.<sup>14</sup>

I raised these matters with the PSNI as part of this year's monitoring work. I have been informed that the PSNI has responded directly to the Northern Ireland Human Rights Commission addressing the issues raised. The PSNI has outlined its position as follows:

- a.** All detainees are treated equally on reception to the custody suite. All detainees are presented to the custody officer in the charge desk where the PSNI electronic custody record system is located (together with all other relevant standard forms) and where personal property can be collected, recorded and stored. This area is monitored by cameras.
- b.** Each detainee is risk assessed by the custody officer. The electronic custody record system also contains questions for the detainee which assist the risk assessment process.
- c.** The conditions of cells are by their nature stark and basic. The basic unisex cell is designed for single occupation in a minimal space. The surfaces are designed to prevent detainees tearing, peeling or picking the surfaces to deliberately damage the cell or cause self-harm or illness by consuming material or somehow using such material as a weapon. This is common design practice of all police services throughout the UK and accords with the Home Office Custody Design Guide and ACPO Guidance.

<sup>13.</sup> The suite was closed for refurbishment and re-opened on 16 April 2007.

<sup>14.</sup> Letter from the Chief Commissioner of the Northern Ireland Human Rights Commission to the Chief Constable dated 5 April 2007.

- d. The basic single unisex design is deemed suitable for all detainees by the Home Office Custody Design Guide and the ACPO Guidance. It is general practice that juvenile detainees, female detainees and drunk or drugged detainees are located in cells closest to the custody office for supervisory purposes.
- e. The privacy of detainees is recognised but must be addressed within the context of the safety of the detainee. Observation of the entire cell is vital to the safety of the detainee. Consideration is given to the privacy of detainees by pixilation of the toilet area. This allows custody officers to see movement in the area but not detail.

I welcome the PSNI's detailed response to the serious concerns raised by the Northern Ireland Human Rights Commission. The Policing Board will continue to monitor the activities of the Commission in relation to the detention of persons in custody and the PSNI's response to any matters of concern which the Commission reports.

### Custody records

A custody record must be opened as soon as practicable for each person brought to a police station.<sup>15</sup> Custody records are now maintained electronically. Subsequent revisions to custody records must also be recorded electronically. A total of 1,059 custody records of the 1,618 detainees held (65%) were checked by custody visitors between April 2007 and March 2008. The vast majority related to detainees arrested under the Police and Criminal Evidence (Northern Ireland) Order 1989. Five related to detainees arrested under the Terrorism Act 2000 at Antrim Serious Crime Suite. 206 detainees refused a visit but allowed their custody records to be checked. Although the custody records were checked in a high proportion of the valid visits that were undertaken, it is not clear why they were not checked in other cases.

The custody record serves as an important reference point for the custody visitors in identifying any matters of concern during their inspections. At present, however, although there is a reference to the custody record on the form completed by the custody visitors with the note "Comments/Reasons not seen", the custody visitors are not expressly required to record whether the custody records checked during their inspections are satisfactory. This would be useful to ensure that conditions and treatment of detainees are cross-referenced by

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15. Police and Criminal Evidence (Northern Ireland) Order 1989, Code C, para.2.1.



custody visitors with individual custody records. Rather than make a formal recommendation, I suggest that the Policing Board's custody visitor form<sup>16</sup> should be amended to include the requirement that during visits, custody visitors review custody records of detainees and indicate whether they are satisfactory. Any training implications for custody visitors should be addressed at the same time as other scheduled training is due to be delivered by the Policing Board.

### Delay in entry to custody suites

Custody visitors continued to report delays in gaining access to custody suites in a small percentage of visits in 2007/2008. As in previous years, the custody visitors indicated that delays were in the main likely to occur during busy periods and through no fault of custody suite staff.

In our 2006 Report, we recommended that the PSNI remind its custody officers, in particular custody sergeants, of the role and responsibilities of the custody visiting teams, and the need to facilitate custody visits as a matter of standard practice.<sup>17</sup>

The PSNI accepted our recommendation<sup>18</sup> and amended and reissued its procedure on custody visitors in January 2007.<sup>19</sup> The procedure reminds custody officers of the role of custody visitors and the need to facilitate their visits, emphasising that custody visitors should be given immediate access to custody suites and that delay will only be acceptable where immediate access places a person at risk of injury. In our 2007 Report, we concluded that the procedure on custody visitors met the concerns we highlighted in our 2006 Annual Report. However, the PSNI had not indicated to us how the new policy has been brought to the specific attention of custody sergeants and custody officers. We therefore concluded that Recommendation 40 of our 2006 Annual Report had been implemented only in part. In its 2007-2008 Programme of Action, PSNI commented that in its view this recommendation had been completed. It confirmed that reminders of the role and responsibilities of the custody visiting teams, and the need to facilitate custody visits as a matter of standard practice, had been issued to all staff.

I am pleased to record that there were no reports between April 2007 and March 2008 of custody visitors being delayed in accessing custody suites due to reception staff being unaware that custody visitors are entitled to immediate access to custody suites.<sup>20</sup> Against this background, I consider Recommendation 40 of our 2006 Annual Report to be implemented in full.

16. Policing Board CV2 form.

17. 2006 Annual Report, Recommendation 40, p.123.

18. PSNI's Human Rights Programme of Action 2006-2007, p.20.

19. General Order No. 40/2006 Custody Visitors, 5 September 2006, reissued 26 January 2007. Now SP 40/2006, Custody Visitors, revised and reissued May 2008 (PSNI custody visitor procedure).

20. There were, however, two incidents reported at Strandtown custody suite in September and October 2007 where visits were aborted due to custody suite staff wrongly requiring the custody visitors to submit an identity card or other form of identity as a receipt for a visitor's pass to the custody suite. This is not a requirement of the PSNI procedure on custody visitors. At the time, this was station policy. The Policing Board referred these incidents to the District Commander of Strandtown. No similar incidents have been reported on subsequent visits to Strandtown by the custody visitors.

As in previous years, I have analysed the reports of custody visitors to identify trends in delays (of over 10 minutes) experienced in 2007/2008 when gaining access to custody suites. The results are set out in Table 7.

### Table 7:

Delays experienced by custody visiting teams, April 2007-March 2008

	Belfast/ Antrim	Down/ Armagh	North- West	Tyrone/ Fermanagh	Antrim Serious Crime Suite	Total
<b>Delay</b> (>10 mins)	46	2	2	1	6	<b>57</b>

Custody visitors experienced a delay of more than 10 minutes in gaining entry to a custody suite on 57 occasions during April 2007 to March 2008. This represents 5% of the total number of visits conducted during the period, an increase of two percentage points on the figure for 2006/2007. The Belfast/Antrim custody visiting team again experienced the highest number of delays, reporting a delay on 52 occasions, twice the 2006/2007 figure of 26.<sup>21</sup> In line with previous years, the majority of delays were a result of custody staff being busy (75%) or detainees being processed (19%). 5% of delays were due to messages not being effectively communicated by the front desk.

The increase in delays between April 2007 and March 2008 suggests that delay is still an issue. However, when I met with custody visiting team representatives in July 2008, they reported that whilst they continue to experience delays at times (particularly prevalent for the Belfast/Antrim custody visiting team), these are mostly for short periods and as a result of a large number of detainees being held.

### Meeting between custody visitors and District Command Teams

In our 2006 Annual Report, we recommended that the PSNI consider establishing a policy that all District Commanders meet their respective custody visiting teams on an annual basis to discuss concerns regarding the treatment of persons in custody.<sup>22</sup> In its Human Rights Programme of Action 2006/2007, the PSNI indicated that it did not consider it necessary to introduce a policy *requiring* all District Commanders to meet their respective custody visiting teams. Instead, the PSNI has left it to District Commanders to decide whether to meet with their respective custody visiting teams. In our 2007 Annual Report, we considered Recommendation 39 of our 2006 Annual Report to be implemented but continued to monitor communications between custody visiting teams and their respective District Command Teams.

<sup>21</sup>. Including six occasions at Antrim Serious Crime Suite.

<sup>22</sup>. 2006 Annual Report, Recommendation 39, p.118.

When I met with the representatives of the custody visitor teams in May 2007, they indicated that their interaction with District Commanders continued to be minimal. The custody visitors agreed that an annual meeting between representatives of the custody visiting team and the District Command Team would be useful.<sup>23</sup> In our 2007 Annual Report, we therefore made the recommendation that the PSNI should *reconsider* establishing a policy that all District Commanders meet their respective custody visiting teams on an annual basis to discuss concerns regarding treatment of persons in custody.<sup>24</sup>

In March 2008, I met with ACC Criminal Justice to discuss this recommendation. He acknowledged the important role of the custody visiting teams but suggested that it may be more productive for the custody visiting teams to report publicly to their respective District Policing Partnerships rather than to convene private meetings with their PSNI District Command Teams. I discussed this proposal at my meeting with custody visiting team representatives in July 2008. The custody visitors agreed that the proposal had merit in that first, their concerns would be raised in a public forum and second, the local District Policing Partnership would be able to monitor the PSNI District Command Team's response to concerns raised. It was suggested that the Policing Board should provide guidance for custody visiting teams to ensure the adoption of a standard and consistent approach by custody visiting teams to the presentations made to District Policing Partnerships.

The Policing Board is currently consulting all custody visitors on this proposal through its 2008 Custody Visitor Survey. Against this background, I withdraw Recommendation 36 of our 2007 Annual Report and make the recommendation that the Policing Board should consider establishing a protocol whereby each of the Policing Board's custody visiting teams makes a public presentation on its activities and any concerns it has regarding treatment of detainees or conditions of detention to a District Policing Partnership within its area.

**Recommendation 27:**

**The Policing Board should consider establishing a protocol whereby each of the Policing Board's custody visiting teams makes an annual public presentation on its activities and any concerns it has regarding treatment of detainees or conditions of detention to a District Policing Partnership within its area.**

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23. Meeting between representatives of the Policing Board's custody visitor teams and the Policing Board's human rights advisor on 22 May 2007.

24. 2007 Annual Report, Recommendation 36.

## DISCONTINUATION OF THE ROLE OF INDEPENDENT COMMISSIONER FOR DETAINED TERRORIST SUSPECTS

In September 2005, the role of the Independent Commissioner for Detained Terrorist Suspects was discontinued and responsibility for independent oversight of the detention of persons suspected of terrorist offences transferred to the Policing Board's Independent Custody Visiting Scheme. At the time of the discontinuation of the Commissioner's role, the Secretary of State indicated that custody visitors would not be taking on *all* of the functions of the Commissioner.<sup>25</sup> Although the role of the custody visitors was extended in September 2005 to enable them to monitor interviews, our analysis indicated that none of the other powers and functions of the Commissioner had been subsumed by custody visitors. We considered that this left significant gaps in the protection of terrorist suspects detained by the PSNI and recommended that the Policing Board, in liaison with the PSNI and the Northern Ireland Office, address the question of how these gaps in the protection of terrorist suspects detained by the PSNI could be filled.<sup>26</sup>

Table 8 of our 2007 Annual Report<sup>27</sup> identified the continuing gaps in the protection of terrorist suspects, which I summarise below:

1. Inspection of the arrangements for monitoring interviews by CCTV.
2. Inspection of the arrangements for electronic time-stamping of interview notes.
3. Observation of interviews of detainees via CCTV monitor with the permission of the detainee.
4. Following observation of an interview by CCTV monitor, the Commissioner was granted immediate access to a detainee where he had grounds for concern. Custody visitors only have access to the detainee with the detainee's permission.
5. Attendance as an observer at any police interview with a suspect (subject to certain conditions).
6. The Commissioner had power to receive complaints from persons who were, or who had been detained, or from their solicitors. Such complaints were referred to the Chief Constable who would inform the Commissioner of the outcome.

25. Commissioner's Concluding Report 2005, p.10.

26. 2006 Annual Report, Recommendation 38, p.117.

27. 2007 Annual Report, p.234.

7. The Commissioner had a duty to keep under review the Codes of Practice governing the detention, treatment and questioning of persons detained and to make recommendations to the Secretary of State for their revision. The custody visiting teams have no corresponding responsibility. The Policing Board does however have a duty to keep the Codes of Practice under review and to make recommendations as and when appropriate.

In our 2007 Annual Report, we suggested that those gaps could possibly be filled by adjustment to the Independent Custody Visiting Scheme. We therefore recommended in our 2007 Annual Report that the Policing Board, in liaison with the PSNI and the Northern Ireland Office, reconsider the question of how these gaps in the protection of terrorist suspects detained by the PSNI could be filled.<sup>28</sup>

Although the numbers of persons detained for terrorist-related offences is currently low,<sup>29</sup> the introduction of new legislation permitting up to 42 days' pre-charge detention of terrorist suspects<sup>30</sup> reinforces the need for rigorous scrutiny of the procedures to deal with this group of detainees, the treatment they receive and the conditions in which they are held.

In June 2008, the Policing Board confirmed that the Independent Custody Visiting Scheme could be expanded to cover the gaps in protection we had identified, subject to the provision of suitable training to the custody visitors which could be included with the custody visitor training already scheduled for September 2008. Again, I discussed this proposal at my meeting with custody visiting team representatives in July 2008. The custody visitors unanimously agreed that the proposal had merit and that it was appropriate for custody visitors to assume this expanded role. The Policing Board is currently consulting all custody visitors on this proposed extension of their role through its 2008 Custody Visitor Survey. The Policing Board will take their views into account and then take the necessary steps to expand the remit of the Independent Custody Visiting Scheme to cover these areas deemed appropriate for volunteers to oversee.

Against that background, I consider Recommendation 37 of our 2007 Annual Report to be implemented in full.

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28. 2007 Annual Report, Recommendation 37, p.235.

29. Between April and December 2007, there were 108 terrorist suspects held at Antrim Serious Crime Suite. This compares with 141 held during the same period the previous year.

30. Counter-Terrorism Bill 63 07-08, is currently at Committee stage in the House of Lords.

## NON-DESIGNATED DETENTION CELLS

The Chief Constable designates police stations which are to be used for the purpose of detaining arrested persons and has the power to designate a station which was not previously designated or to direct that a designation of a station previously made shall cease to operate.<sup>31</sup> A number of non-designated detention cells<sup>32</sup> exist in Northern Ireland, which are not currently included within the remit of the Policing Board's Independent Custody Visiting Scheme. We reported in our 2007 Annual Report that the numbers of persons detained in these non-designated police stations is a small percentage of all persons detained by the PSNI. Those persons are subject to safeguards contained within the Police and Criminal Evidence (Northern Ireland) Order 1989 and associated Codes of Practice and have access to legal advice, medical assistance, appropriate adults and interpreters. Moreover, any complaints from persons held in non-designated police stations are referred to the Police Ombudsman for investigation. Nonetheless, we expressed concern that the protections afforded those detained in non-designated cells remained less than those available to those held in designated police stations and that there was no good reason for this discrepancy.<sup>33</sup> We therefore recommended that the Policing Board, the PSNI and the NIO consider extending the Independent Custody Visiting Scheme to include non-designated detention cells.<sup>34</sup>

In its Programme of Action 2007-2008, the PSNI stated that it accepted this recommendation and that it would be included in the revised PSNI service procedure on custody visitors by January 2008. However, the PSNI has since indicated that the existing legislative framework<sup>35</sup> does not permit custody visitors to visit non-designated stations<sup>36</sup> and that the change in procedure will not take effect until the necessary legislative changes have been made.

In June 2008, I wrote to ACC Operational Support requesting current information on the number and location of non-designated detention cells and the number of persons detained in those cells over the past year. ACC Operational Support did not provide the information I had requested, indicating that to do so would incur considerable administration costs.<sup>37</sup> There are currently 23 designated police stations, thus rendering all other police stations non-designated. In summary, the detention of persons in non-designated detention cells means that:

- (i) detainees so held do not have the same level of safeguards as those detained in designated cells;

31. Police and Criminal Evidence (Northern Ireland) Order 1989, Article 36.

32. Article 32 of PACE requires that a person arrested elsewhere than at a police station shall be taken to a police station as soon as practicable after the arrest. The police station must be a designated police station unless (i) it appears that it will be necessary to hold the person for less than six hours and the locality in which the constable is working is covered by a police station that is not designated, (ii) the arresting constable has no assistance and it appears to the constable that he will be unable to take the arrested person to a designated police station without the arrested person injuring himself, the constable or some other person, or (iii) it appears to the constable that he will be unable to take the arrested person to a designated police station without exposing the arrested person or

himself to unacceptable risk of injury. If the first station to which the arrested person is taken is not a designated station, he must be taken to a designated station not more than six hours after his arrival at the first police station unless he is released previously or the arrest was made by a police officer and the continued detention at the first police station is authorised by an officer not below the rank of Superintendent. Continued detention may only be authorised if the officer is satisfied on reasonable grounds that it would expose the person and those accompanying him to unacceptable risk of injury if he were taken from the first police station.

33. 2007 Annual Report, p.236.

34. 2007 Annual Report, Recommendation 38.

- (ii) an officer detaining an individual in a non-designated cell is under a duty to perform all the functions of a custody officer;<sup>38</sup> and
- (iii) there is little, if any, monitoring of the treatment of detainees held in non designated detention cells or the conditions of their detention.

This raises potentially significant human rights considerations under ECHR Article 3 (prohibition against torture, inhuman and degrading treatment); Article 5 (right to liberty and security) and Article 6 (right to a fair trial).

I discussed the proposal to extend the Independent Custody Visiting Scheme to include non-designated cells during my meeting with custody visiting team representatives in July 2008. The custody visitors unanimously agreed that, in principle, this was an important and appropriate extension of the Scheme. I also discussed the proposal with the Policing Board's Director of Planning who also endorsed the extension of the Policing Board's Scheme. It appears there are two options. Either the Policing Board, as the administrator of the Independent Custody Visiting Scheme, seeks to apply for the necessary legislative changes to the Independent Custody Visiting Scheme to allow custody visitors to inspect non-designated places of detention or the PSNI and the Policing Board agree a protocol allowing custody visitors to do so in any event.

I am aware that due to the less frequent use of non-designated cells, it is likely that in the event that custody visitors conducted unannounced visits to non-designated places of detention, they would find no detainees being held at the time of their visit. It may therefore be necessary for custody visiting teams to conduct announced visits to non-designated detention facilities. Again, I raised this with custody visitors during my meeting in July 2008. They accepted that this practical limitation may be unavoidable.

Against this background, I consider Recommendation 38 of our 2007 Annual Report to be implemented in full but make the recommendation that the PSNI and the Policing Board should agree a process to allow custody visitors to inspect non-designated places of detention.

### **Recommendation 28:**

**The PSNI and the Policing Board should agree a process to allow custody visitors to inspect non-designated places of detention.**

35. Police (Northern Ireland) Act 2000, s.73.

36. Letter PSNI Operational Support to Policing Board Service Monitoring branch dated 3 December 2007.

37. Letter ACC Operational Support to Policing Board's human rights advisor dated 18 August 2008.

38. Police and Criminal Evidence (Northern Ireland) Order 1989, Article 37(7).

## VULNERABLE PERSONS IN CUSTODY

In 2007/2008, I continued to monitor the PSNI's approach to the detention of vulnerable persons. The PSNI's approach to the detention of vulnerable persons is based on ACPO Guidance on Safer Detention and Handling of Persons in Police Custody.<sup>39</sup> The PSNI has established a working group to implement the ACPO Guidance into PSNI policy and procedure.<sup>40</sup> We reported in our 2007 Annual Report that the PSNI had indicated that it intended to issue a custody policy directive to provide instructions and guidance to officers.<sup>41</sup> A year later, the PSNI Custody Directive remains in draft. Following external consultation, the contents of the policy are now the subject of internal scrutiny and review.<sup>42</sup> The PSNI has informed me that the policy should be issued by the end of this year. It is regrettable that the development of the policy directive has taken so long but I welcome the PSNI's indication that the policy directive will be issued in the coming months.

### PSNI custody working group

The PSNI custody working group<sup>43</sup> is chaired by ACC Operational Support. The working group provides a forum to develop and disseminate policy, guidance and best practice in relation to the treatment of persons in custody and to liaise with other organisations involved in custody provision.

In our 2007 Annual Report, we recommended that a member of the Policing Board's Service Monitoring branch represent the Policing Board on the PSNI's custody working group.<sup>44</sup> In its 2007-2008 Programme of Action, the PSNI confirmed that it accepted our recommendation and the Policing Board is now represented on the PSNI custody working group. Against this background, I consider Recommendation 39 of our 2007 Annual Report to be implemented in full.

### PSNI custody risk assessments

The PSNI conducts and maintains a generic risk assessment in relation to each PSNI detention facility. In 2007, we reviewed the PSNI's risk assessment template<sup>45</sup> which we considered to be comprehensive and rigorous.<sup>46</sup> The risk assessment sets out the duties of custody suite staff to implement control measures to avert any risks identified. Specific control measures are outlined to prevent detainees suffering from ill health or self harm.<sup>47</sup> The risk assessment also outlines several other control measures to be implemented during detainee processing.<sup>48</sup> The

39. ACPO Guidance on Safer Detention and Handling of Persons in Police Custody 2006.

40. The working group is chaired by Chief Superintendent Operations Branch and includes representatives from PSNI Headquarters, PSNI Urban and Rural regions, Estate Services, Procurement and Logistics Services, Training, Education and Development, Health and Safety Unit and the PSNI Horizon Team (responsible for implementing the NICHE custody record system). A gap analysis of current PSNI policy and procedure has been conducted and where gaps exist, the PSNI intends to issue further direction or update current policy as necessary.

41. Letter from Policing Board's human rights advisors to ACC Operational Support, dated 12 April 2007.

42. Letter ACC Operational Support to Policing Board's human rights advisor dated 18 August 2008.

43. Membership includes representatives of PSNI Operational Support and Support branch, Urban and Rural Regions (including one custody sergeant from each Region), the Police College, Health and Safety branch, Supplies branch, Estate Services Business Unit, Crime Operations branch and the Criminal Justice department.

44. 2007 Annual Report, Recommendation 39.

45. PSNI Risk Assessment, Detainee/Custody Duties, Form RA3 11/04.



custody officer<sup>49</sup> is required to question each detainee to determine if he or she is suffering from illness, on medication or has a propensity to self harm.<sup>50</sup> The training programme for civilian detention officers introduced by the PSNI in June 2008 also provides training in risk assessment to enable civilian detention officers to contribute to the formal risk assessment process.<sup>51</sup> The PSNI generic risk assessment is currently under review.<sup>52</sup>

### Suicide and self harm

The PSNI's risk assessment outlines several measures to be taken by custody staff to avert the risk of self harm by detainees while in custody. These include supervision of detainees and restrictions on movement within the custody suite, particularly in areas which are not ligature free, weekly testing of cell alarms and regular checking and monitoring of detainees via CCTV. Implementation of each of these control measures should be recorded and monitored on the risk assessment. Individual risk assessments of detainees are conducted by custody suite staff on a continuing basis throughout the period of detention.<sup>53</sup>

As I have already noted, incidents of concern reported by custody visitors relate overwhelmingly to matters of safety and security (249 out of 500). Of those concerns raised, there were at least 8 reports of potential ligature points. It was not clear which of the various incidents raised by the custody visitors remained outstanding as at August 2008. However, in one particular case, custody visitors (and the local District Policing Partnership) reported the identification of ligature points at Strandtown custody suite in October 2006.<sup>54</sup> The suite continued to be used to hold detained persons and corrective work was only undertaken in April 2008.<sup>55</sup> This is a cause for concern.

Custody visitors also reported a number of other examples of situations which could have resulted in an individual being seriously harmed during the year. When I met with custody visitors in July 2008, I asked them whether they had reservations regarding the level of supervision of detained persons who had a history of, or propensity to, self harm. The custody visitors unanimously indicated that they were satisfied with the level of supervision provided by custody staff. This is to be welcomed. Custody visitors did, however, once again express concerns about the failure of the PSNI on a number of occasions to respond with urgency to concerns raised by them, particularly in relation to potential ligature points.<sup>56</sup> I have discussed this matter and made recommendations to address the concerns raised earlier in the chapter.

46. The risk assessment requires custody staff to consider risks associated with the general working environment of the custody suite; staffing levels; the processing, handling and searching of detainees; young children in custody; the condition and treatment of persons during detention; the provision of first aid; visits by appropriate adults, custody visitors and solicitors; and supervision of detainees when using toilet facilities.

47. These include regular inspection of cells and other areas to which detained persons have access and an obligation on all PSNI staff to report hazards to custody suite staff, particularly ligature points and unsafe storage.

48. Including the requirement that arresting officers notify custody officers (i) where a risk of self harm exists; (ii) where the detainee has been violent; (iii) where CS spray has been used during arrest and (iv) whether the detainee has been searched or first aid administered.

49. Since February 2007, all officers attending the PSNI custody officer training programme have been trained as risk assessors.

50. All such information gathered must be recorded on the custody record and used to determine the level of supervision given to the detainee during the period of detention.

51. Letter ACC Operational Support to Policing Board's human rights advisor dated 18 August 2008.

52. Letter ACC Operational Support to Policing Board's human rights advisor dated 18 August 2008.

53. Risk assessments are conducted on the basis of guidelines contained in the ACPO Manual of Guidance for Safer Detention.

54. Following the receipt of a Form CV2.

55. This was confirmed at the East Belfast Meeting in Public of the District Policing Partnership on 25 February 2008.

56. Their concerns are corroborated by custody visitor reports to the Policing Board over the course of the last year.

Finally, I note that following the investigation into the death of a 27 year old prisoner who used his shoelaces to hang himself from a concertina-type gate in a PSNI custody suite, the Police Ombudsman recommended that the PSNI should undertake a review of police custody suites across Northern Ireland. The Ombudsman also recommended that the PSNI should conduct a review to ensure officers' first aid training was up to date.<sup>57</sup> I will monitor the PSNI's response to the Ombudsman's recommendations and report further in next year's Annual Report.

## IMMIGRATION DETAINEES

Until early 2006, the practice in Northern Ireland - alone in the UK - was to hold immigration detainees in prisons rather than in Immigration Removal Centres (Immigration Centres). Immigration Centres are not prisons and those detained there have not been charged with a criminal offence. Nor have they been detained through the normal judicial process. Immigration Centres are designed to provide "secure and humane detention under a relaxed regime"<sup>58</sup> to reflect the circumstances in which immigration detainees have been deprived of their liberty.

Since January 2006, immigration detainees and some asylum seekers from Northern Ireland are routinely transferred to detention facilities in Scotland and England, with the majority transported to Dungavel Immigration Removal Centre in Scotland.<sup>59</sup> Individuals deemed eligible for the fast track asylum procedure are held, in the first instance, at police custody suites. Individuals may spend up to four or five days in a custody suite. A number of concerns have been raised about this practice by both HM Chief Inspector of Prisons and the Northern Ireland Human Rights Commission.

In 2007, HM Chief Inspector of Prisons published a report on detainees at Dungavel House Immigration Removal Centre in Scotland.<sup>60</sup> That report was based on an announced escort inspection that took place on 4-8 December 2006. The report focused on those detainees who had been transferred from Belfast and highlighted that the transfer across the borders between Scotland, England and Northern Ireland affected both family links and access to legal advice and the courts.<sup>61</sup> Periods of detention in police stations without any proper facilities prior to transfer from Belfast of between two to four nights were reported, including the detention for two nights of a five months pregnant woman. No legal advice was received during these periods of detention. The report also noted that police custody records were not routinely attached to immigration records, hindering the provision of appropriate medical or other needs when detainees were transferred.

57. The Northern Ireland Police Ombudsman Digest, Issue 1, Spring 2008.

58. The Detention Centre Rules 2001, SI 2001238, Rule 3(1).

59. The decision to transport immigration detainees out of Northern Ireland was taken without any form of public consultation.

60. Detainees under escort at Dungavel House IRC, Report on an announced escort inspection 4-8 December 2006 by HM Chief Inspector of Prisons.

61. At para.1.6.

Given the serious concerns raised by the Northern Ireland Human Rights Commission and HM Chief Inspector of Prisons in 2007, I continued to monitor detention of immigration detainees as part of this year's monitoring work. At my meeting with representatives of the custody visiting teams in July 2008, concerns were again raised regarding the treatment of immigration detainees, particularly the length of time they were detained in police detention facilities before they were transferred to a proper Immigration Centre.

I asked the PSNI for further information on the PSNI's policy and procedures relating to immigration detainees. I also requested an outline of the PSNI's response to the specific concerns identified in HM Chief Inspector's report on Dungavel in May 2007. By way of answer, I was referred to the PSNI's written response (a letter dated 8 May 2007) to the concerns we had raised as part of the Policing Board's monitoring work last year. This is disappointing.

The PSNI has revised its protocol with the Border and Immigration Agency for the use of PSNI custody facilities to detain immigration detainees.<sup>62</sup> The new Memorandum of Understanding between the PSNI and the Border and Immigration Agency was agreed on 18 January 2008. I have reviewed the new Memorandum and, in order to clarify the roles and responsibilities of the two organisations, I outline the key provisions of the Memorandum below.

The Immigration and Asylum Act 1999 (as amended) extended the powers of immigration officers. Officially designated immigration officers now have powers of arrest, entry, search and seizure. However, where an immigration officer is not officially designated to make arrests, a police officer is required to make the arrest on behalf of the immigration officer.

A joint protocol was signed in 2001 between the then UK Immigration Service and ACPO to provide a framework for an effective partnership between the police and Immigration Service and, in particular, to establish a mechanism allowing the police to assist, support and work with the Border and Immigration Agency. The Memorandum of Understanding between the PSNI and the Border and Immigration Agency is designed to reflect the overarching protocol. In Northern Ireland, the Border and Immigration Agency does not have arrest teams in place and therefore the PSNI is required to make arrests on its behalf.

The Memorandum includes detailed provisions on custody and detention and treatment at a custody suite. It recognises that persons arrested on suspicion of immigration offences are non-PACE prisoners but requires that they be treated

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<sup>62</sup>. Protocol for the use of PSNI custody facilities by HM Customs and Excise and protocol for the use of PSNI custody facilities by the UK Immigration Service.

in accordance with PACE and subject to the same safeguards and protections afforded to PACE detainees. The memorandum refers to the Direction given by the Home Secretary on Immigration (Places of Detention) in 2004, noting in particular:

“Detainees should preferably only spend one night in police cells, with a normal maximum of two nights. In exceptional cases, a detainee may spend up to 5 nights continuously in a police cell... if, for instance, he is awaiting transfer to more suitable... accommodation and the police are content to maintain detention. Such detention must be authorised by an (Immigration) Inspector who must take into account the Immigration Service’s duty of care for detainees and the likelihood that police cells do not provide adequate facilities for this purpose in the long term” (emphasis added).

This reference to the Home Secretary’s Direction is significant. During my meeting with representatives of the custody visiting teams in July 2008, they reported cases of immigration detainees being held in PSNI detention facilities for four to five days. This practice quite clearly contradicts the Direction, which requires that such extended detention should only happen in *exceptional cases*. The Policing Board will continue to monitor the length of time that immigration detainees spend in PSNI custody facilities before transfer to appropriate immigration detention centres in the coming year and, if necessary, meet with the Border and Immigration Agency to discuss this matter.

In July 2008, the Northern Ireland Human Rights Commission published its submission to the United Nations’ Human Rights Committee,<sup>63</sup> which highlighted serious concerns about the treatment of persons subject to immigration detention and the current practice of transporting immigration detainees out of Northern Ireland to detention facilities in Scotland and England.<sup>64</sup> The Northern Ireland Human Rights Commission is due to publish a specific report on the treatment of immigration detainees later this year.

The UN Human Rights Committee stated, in its Concluding Observations on the UK in July 2008,<sup>65</sup> that any detention of asylum seekers in prisons is ‘unacceptable’. It expressed deep concern at the failure to keep statistics on persons subject to deportation who are removed from Northern Ireland to Great Britain, as well as their temporary detention in police cells.<sup>66</sup> The UN Human Rights Committee made the following recommendations:<sup>67</sup>

63. Submission to the United Nations’ Human Rights Committee under the International Covenant of Civil and Political Rights (93rd session 7-25 July 2008), May 2008. The submission is a Shadow Report, building on submissions in October 2007 and November 2007.

64. The Commission raised concerns about the lack of continuity of legal advice when moved between Northern Ireland and other parts of the UK (which are separate legal jurisdictions). The Commission also raised concerns regarding the lack of publicly available information on the number of people subject to immigration and/or asylum laws in Northern Ireland and the numbers of people transported from Northern Ireland to Dungavel or elsewhere in Scotland or England.

65. Consideration of Reports Submitted by States Parties under Article 40 of the International Covenant on Civil and Political Rights 1976, Concluding Observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/6, 21 July 2008 (UN Human Rights Committee Concluding Observations), para.21.

66. UN Human Rights Committee Concluding Observations, para.21.

67. UN Human Rights Committee Concluding Observations, para.21.

- a.** The UK should review its detention policy with regard to asylum seekers.
- b.** The UK should take “immediate and effective measures” to ensure that all asylum seekers who are detained pending deportation are held in centres specifically designed for that purpose.
- c.** The UK should end the detention of asylum seekers in prisons.
- d.** The UK should ensure that asylum seekers have full access to early and free legal representation so that their rights under international human rights law receive full protection.
- e.** The UK should provide appropriate detention facilities in Northern Ireland for persons facing deportation.

The Policing Board will monitor the UK’s response to the recommendations of the UN Human Rights Committee, and any consequential impact on PSNI policies, procedures and processes.

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# Chapter 12: HUMAN RIGHTS AWARENESS IN THE PSNI

A tangible human rights culture will only be firmly entrenched within the PSNI through the continued promotion of human rights awareness of PSNI officers at all levels and an explicit continuing commitment by the PSNI to human rights based policing. As the Oversight Commissioner acknowledged in his final report in 2007, the creation of a culture of human rights is not something that is achieved once and then endures without further attention. This is a continuous process which is the on-going responsibility of the PSNI, the Policing Board and the devolved government.<sup>1</sup>

# 12

## MONITORING PSNI HUMAN RIGHTS AWARENESS AND CULTURE

The Oversight Commissioner also stated in his final report that:

“The fundamental test for whether a police service has developed a human rights culture is the quality of the interactions between police and public. Important indications of this come through the formal complaint process, which is supervised by the Police Ombudsman, and internal disciplinary mechanisms within the Police Service... What is needed, in addition, are studies that evaluate the daily, routine contacts between police and public. This can be done in various ways, such as locally focused surveys, call-backs to people who have had contact with the police, representative focus groups and systematic observation by qualified civilians or law enforcement professionals. In the end, the quality of police interactions with the public will determine whether the people of Northern Ireland believe that the vision of the [Patten] Commission with respect to human rights has been achieved.”<sup>2</sup>

Over the last five years, a number of initiatives have been established which monitor and evaluate interactions between police and public. These initiatives span the range of activities articulated by the Oversight Commissioner as necessary to test the development of a human rights culture by the PSNI, and include assessment of the formal police complaint process, PSNI internal disciplinary mechanisms and also the daily, routine contacts between the PSNI and the public. A large number of the initiatives have been developed as part of the Policing Board’s annual human rights monitoring process and have already been referenced in earlier chapters of this report. In this chapter, I identify the major initiatives by way of demonstration of the work that continues on an annual basis to assess not only the human rights awareness of police officers but the nature of the human rights culture developing within the PSNI.

### Policing Board human rights questionnaire 2004

In 2004, we devised a human rights questionnaire, which was sent to all PSNI officers, including full time and part time reserves.<sup>3</sup> It was intended to gauge basic human rights knowledge and to give some indication of the extent to which a human rights culture existed across the PSNI. We recorded that even by that time, in the first year of the Policing Board’s annual human rights assessment, the vast majority of officers (87%) recognised that they had a duty to respect the human rights of all persons.<sup>4</sup> We also reported<sup>5</sup> that at that time, 48% of officers

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1. Office of the Oversight Commissioner, Report 19, May 2007, p.25.  
2. Office of the Oversight Commissioner, Report 19, May 2007, p.26.  
3. The questionnaire was sent out in March 2004 as a joint initiative between the Policing Board and the PSNI.  
4. 2005 Annual Report, chapter 12, p.159.  
5. 2005 Annual Report, chapter 12, p.154.

who responded considered their knowledge of human rights to be adequate, 32% considered it was good and 15% considered their knowledge to be good in some respects and poor in others. We stated that these results were an important insight into the perception of PSNI officers of their own state of knowledge and concluded that the perception was realistic.<sup>6</sup>

In 2004, as part of our work to gauge human rights awareness in the PSNI, we also conducted a series of focus groups in different areas of Northern Ireland, involving officers of different ranks. We reported that officers understood human rights in terms of the different rights available to individuals.<sup>7</sup> Absolute and qualified rights were also well understood.<sup>8</sup> Those who participated felt that, in the future, the PSNI should find a method to entrench human rights within PSNI training and culture, promoting its positive value to daily policing activities and duties.<sup>9</sup>

In our 2005 Annual report, we made a number of recommendations regarding consideration and integration of the results of the questionnaire by the PSNI (then) training department.<sup>10</sup> In our 2007 Annual Report, we reported that the vast majority of these recommendations had been implemented in full<sup>11</sup> and one had been withdrawn.<sup>12</sup> However, Recommendation 55(e) of our 2005 Annual Report, which required the Police College to analyse the results of Questions 11-14 of our 2004 questionnaire,<sup>13</sup> remained implemented in part.<sup>14</sup> In light of my findings and conclusions set out in Chapter 2 of this Report, I now consider Recommendation 55(e) of our 2005 Annual Report to be implemented in full.

### PSNI annual human rights programme of action

When we produced our first report on the human rights compliance of the PSNI in 2005, our first recommendation was to require the PSNI to respond to the Policing Board's human rights annual reports. I have already noted in chapter 1 of this report that in 2007, the Oversight Commissioner recognised that our approach in effect made a human rights implementation plan a continuing obligation for the PSNI. This was our intention. This obligation ensures the PSNI's continuing commitment to a tangible human rights culture and the continued promotion of human rights awareness of PSNI officers at all levels.

6. When the results of the human rights questions were taken into account.

7. 2005 Annual Report, chapter 12, p.162.

8. 2005 Annual Report, chapter 12, p.162.

9. 2005 Annual Report, chapter 12, p.163.

10. 2005 Annual Report, Recommendations 55, 56 and 58, p.173.

11. 2006 Annual Report, Recommendation 42, p.127 and 2005 Annual Report, Recommendations 55(a)-(c), p.173.

12. 2005 Annual Report, Recommendation 55(d), p.173.

13. 2005 Annual Report, Recommendation 55(e), p.173. Questions 11-14 of the Human Rights Questionnaire asked officers for their views and experiences in relation to knowledge of human rights, human rights training, the frequency with which human rights issues arise in their work and reference points for addressing their human rights queries.

14. The PSNI considered that its substantive response to Recommendation 8 of our 2006 Annual Report (that the PSNI should introduce a programme of human rights specific refresher training which should be offered in a strategic and targeted way, and include "bespoke" scenarios tailored to the operational roles of officers) would satisfy the recommendation.



### **Evaluation of integration of human rights standards into PSNI training**

Chapter 2 of the Human Rights Annual Reports has, over the last three years, investigated the systems in place for the effective internal *and* external evaluation of the PSNI's efforts to integrate and incorporate human rights standards and principles into all PSNI training. We have made a number of significant recommendations which have resulted in PSNI-commissioned external evaluations and the strengthening of internal evaluation systems. In chapter 2 of this report, I have discussed in some detail the report of an external expert appointed by the PSNI Police College to conduct an external audit of the incorporation of human rights standards and principles into police training. As I acknowledge in chapter 2, the evaluation of PSNI training is a significant endeavour and whilst some difficulties remain to be addressed, the PSNI has recognised the importance of effective (internal and external) monitoring systems and their impact on a positive human rights culture.

### **PSNI human rights research at district level**

In chapter 2 of this report, I have also discussed in some detail the work of the PSNI human rights researchers commissioned by PSNI Criminal Justice department to identify and address human rights difficulties and human rights training requirements of officers at district level. The researchers held a total of 37 focus groups across PSNI districts during 2007. This was a useful exercise in assessing both positive and negative aspects of the current PSNI human rights culture.

### **Monitoring the use of routine police powers**

As the Oversight Commissioner recognised, studies that evaluate the daily, routine contacts between the PSNI and the public are also an important method of monitoring the human rights culture of the PSNI. We have consistently monitored the use of stop and search powers by the PSNI in chapter 4 of our human rights annual reports on the ground that the use of such powers constitutes daily, routine policing activity which necessarily interferes with the human rights of individuals stopped and searched. This year, I have analysed in some detail trends around the use of the various stop and search powers given to the PSNI under the Police And Criminal Evidence (Northern Ireland) Order 1989 (PACE), the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007 and have made recommendations to ensure that procedures are in place to effectively monitor the use of such powers.

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### Monitoring complaint and disciplinary processes

Important indicators of an organisational culture which respects human rights can be provided through an analysis of the nature, type and outcome of complaints and the rigour of the internal disciplinary system. Since 2005, we have sought in chapter 6 of the Policing Board's human rights annual reports to analyse in detail the statistics reported annually by the Office of the Police Ombudsman regarding complaints received against the PSNI and the formal and informal resolution and outcome to these complaints. Chapter 6 also provides a comprehensive overview of PSNI internal disciplinary procedures and processes, in particular, investigations and outcomes of PSNI Professional Standards Department.

### Reviewing PSNI appraisal system

In our 2007 Annual Report, we reported on the PSNI's new appraisal system.<sup>15</sup> We recorded that we were satisfied that the PSNI's new appraisal system integrated human rights considerations. We noted, however, that the effectiveness of the appraisal system in monitoring the human rights performance of individual officers would depend on how it is implemented in practice. The Policing Board's Human Resources Committee provides detailed oversight of the PSNI appraisal process.

### Monitoring satisfaction levels of victims of crime

The PSNI/Policing Board Annual Quality of Service Survey, which sets out the level of satisfaction of individuals who have had contact with the PSNI, provides a useful indication of the public's satisfaction with the PSNI and the views of victims of certain crimes on the manner in which they have been treated by the PSNI. I analyse the results of the Quality of Service Survey conducted in 2007/2008 in detail in chapter 10 of this report.

These initiatives monitor interactions between police and public on a variety of levels and allow an informed assessment to be made of the level of human rights awareness and the development of a positive human rights culture within the PSNI. Given the difficulties inherent in assessing a human rights culture of any organisation, it is important that these initiatives be sustained to allow the Policing Board to continue to monitor the efforts made by the PSNI to entrench a tangible and positive human rights culture.

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<sup>15</sup> 2007 Annual Report, Chapter 12, pp.249-252.



# Chapter 13: POLICING WITH THE COMMUNITY

The central foundation of the policing with the community model is police/community engagement, based on the twin principles of community consent and police accountability. The protection and promotion of human rights is integral to this model: police should be effective and efficient, representative and accountable within a sound human rights framework.

# 13

In our 2006 Annual Report, we added an additional chapter specifically looking at the PSNI's approach to policing with the community. In our 2007 Report, we set out the measures the PSNI had taken to reinvigorate its policing with the community strategy and referred to the establishment of the Policing Board's Community Engagement Committee which has the responsibility for monitoring the PSNI's policing with the community strategy. I set out below the PSNI's response to the recommendations we made in this chapter last year and provide a summary of the activities of the Policing Board's Community Engagement Committee.

## PSNI POLICING WITH THE COMMUNITY STRATEGY

In our 2007 Annual Report, we recorded that the PSNI had established a new Policing with the Community team within Criminal Justice department in 2006 to give renewed impetus to implementation of its policing with the community programme. The objective of the team is to make policing with the community the core function of the PSNI through the development and implementation of a work programme (with specific targets and performance indicators) to promote and embed policing with the community as the dominant style of policing within the PSNI.<sup>1</sup>

In our 2007 Annual Report, we also reported on the current status of implementation of the PSNI's neighbourhood policing model. The PSNI Policing with the Community team have devised a corporate model for neighbourhood policing and neighbourhood policing teams based on 25 recommendations reflecting ACPO Principles of Neighbourhood Policing. This model was agreed formally by the PSNI on 18 June 2007 and a Neighbourhood Policing<sup>2</sup> Programme Governance Board established.<sup>3</sup>

In our 2007 Annual Report, we reported on the PSNI's knowledge sharing project which was established as part of its reinvigoration of the policing with the community policy. We considered that the knowledge sharing workshop was a very positive initiative and recommended that the PSNI consider extending this model to a variety of partnership agencies.<sup>4</sup>

The PSNI indicated in its Human Rights Programme of Action 2007-2008 that a business case for the extension of the knowledge sharing project had been prepared and presented to ACC Criminal Justice for consideration.<sup>5</sup> I have subsequently discussed this recommendation with ACC Criminal Justice.

1. 2007 Annual Report, chapter 13, p.255.

2. The proposed model is an organisational strategy which facilitates the police and its partners, as well as the wider community, working closely together to solve problems of crime and disorder and to provide reassurance to the public. The model is intended to provide a corporate approach to neighbourhood policing whilst allowing sufficient flexibility to enable Districts to deliver a local service meeting local needs.

3. 2007 Annual Report, chapter 13, pp.255-256.

4. 2007 Annual Report, Recommendation 40.

5. PSNI Human Rights Programme of Action 2007-2008, p.7.

It is hoped that the recommendation will be taken forward in partnership with Intercom Ireland Limited. Against this background, I consider Recommendation 40 of the 2007 Annual Report to be implemented in full.

## **POLICING BOARD'S COMMUNITY ENGAGEMENT COMMITTEE**

Monitoring the implementation of PSNI's Policing with the Community strategy is an important and wide ranging area of work. In June 2007, the Policing Board established a Community Engagement Committee.<sup>6</sup> Two of the key responsibilities of the Committee are to (i) secure, support and monitor the implementation of policing with the community as the core function of the PSNI and (ii) consider police performance at District level as it impacts on policing with the community.

During 2007/2008, the Policing Board Community Engagement Committee commissioned a recognised expert to consider the PSNI policing with the community strategy and to advise the Committee as to how it should most effectively monitor this area of work. In particular, the Committee sought guidance as to what should be contained within a monitoring framework and what evidence it should seek in order to be satisfied that progress is being made.

The expert's report was presented to the Policing Board in October 2007 and was subsequently agreed by the PSNI as the framework within which its policing with the community strategy would be monitored. The Policing Board is working with the PSNI on the development of this framework and to ensure that the relevant evidence is provided by the PSNI to enable the Board to assess the effectiveness of the measures that the PSNI are putting in place.

A target within Part 3 of the Policing Plan 2007-2010 (and a target in this year's Policing Plan) for PSNI Criminal Justice department is to "promote and establish the ethos of Policing with the Community Strategy and ensure full implementation of Patten Recommendations 44-51". This target is monitored by the Policing Board's Community Engagement Committee which receives six monthly progress reports from PSNI Criminal Justice department. These reports provide information on the following:

- a.** The PSNI's approach to managing public expectations, including consultation, dialogue and engagement within districts;

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6. Following its decision to separate the work strands of the former Community and Human Rights Committee.

- b.** Training and knowledge sharing within PSNI;
- c.** The PSNI's strategy to mainstream policing with the community across all PSNI branches, roles and ranks;
- d.** The impact of workforce modernisation on the PSNI policing with the community strategy, including call management and civilianisation.

The Community Engagement Committee is assisted in its monitoring role at local level by District Policing Partnerships (DPPs) through the Neighbourhood Policing Framework.<sup>7</sup> DPPs monitor the status of implementation of the Framework at local level, with the Policing Board's Community Engagement Committee receiving a Northern Ireland wide status report every six months.

In light of the work of the Policing Board's Community Engagement Committee and the development of a specific policing with the community monitoring framework, it is no longer necessary for policing with the community to form part of the Policing Board's human rights compliance assessment. This chapter will therefore no longer be included in the Policing Board's Human Rights Annual Reports.

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7. 25 recommendations reflecting ACPO Principles of Neighbourhood Policing, detailed in targets 1.1.1, 6.1.1 and 9.1.2 of the Policing Plan 2007-2010.

# Chapter 14: PRIVACY AND DATA PROTECTION

The freedom of information and data protection regimes aim to provide both open, transparent government and appropriate protection of the right to private and family life. Increasing amounts of personal information being held electronically, however, exposes individuals to potential infringements of their information and privacy rights.

# 14



The Human Rights Act 1998 safeguards the right to respect for private life under Article 8 of the European Convention of Human Rights (ECHR). The obligation to provide personal data on request, the release of personal data without consent and the collection, processing and storage of personal data all amount to interferences with an individual's right to respect for his or her privacy.<sup>1</sup> Whether or not an interference amounts to a breach of ECHR Article 8 will depend on whether it is in accordance with the law, necessary in a democratic society for a legitimate aim<sup>2</sup> and proportionate. The adequacy of the safeguards contained within the regime of collection, processing and management, release (or sharing) and storage of data and information is central to this assessment.

ECHR Article 8 also imposes a positive obligation on the State to ensure that its laws provide adequate protection against the unjustified disclosure of personal information. The Data Protection Act 1998 and the Freedom of Information Act 2000 are important parts of the legislative implementation of that positive obligation but their mere existence does not exhaust the obligation to provide adequate safeguards.

In view of the complexity and sensitivity of these related areas, in our 2006 Annual Report we conducted an audit of PSNI policies, procedures and practices surrounding the collection, processing, management, storage, and disclosure of personal data and information, examining compliance with the Data Protection Act 1998 and the Freedom of Information Act 2000. In 2007, we expanded this area of our monitoring work to examine the PSNI's approach to records management. My 2008 report continues to monitor each of these areas.

## DATA PROTECTION

The Data Protection Act 1998 gives people the right, subject to exemption, to access personal information held about them by businesses and organisations in the public and private sectors. In our 2006 Annual Report, we examined PSNI policies and training on data protection and analysed the number and outcome of data protection requests made to the PSNI and the number and outcome of complaints against the PSNI's handling of such requests.

### PSNI data protection policy

The PSNI issued a new data protection policy<sup>3</sup> on 19 June 2008. It is intended to ensure compliance with the PSNI's statutory obligations under the Data Protection Act 1998, the Freedom of Information Act 2000 and the Human Rights

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1. See, for example, *MS v Sweden* (1997) 28 EHRR 313.  
2. That is, in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.  
3. Policy Directive PD 06/08.

Act 1998, as well as the ACPO Data Protection Manual of Guidance. The policy outlines the rules relating to subject access, transaction monitoring, obtaining personal data through non-disclosure exemptions, sharing of personal data, correction and/or erasure, enforcement and retention, and weeding of personal data. It sets out and explains the eight principles on which the Data Protection Act 1998 is based.<sup>4</sup> Reference is made to ECHR Article 8 (right to respect for private life) and its relevance is explained in the accompanying guidance. References are also made to ECHR Article 2 (right to life) and ECHR Article 3 (freedom from torture and inhuman and degrading treatment), both of which may be violated where information is disclosed that may result in the death or injury of an individual who is the subject of the information.

### Data protection training

In our 2006 Annual Report, we reported that the PSNI's data protection training consisted of awareness raising lessons for student officers and civilian staff and an online training package for other members of PSNI staff. While we recognised that the PSNI Data Protection Unit would deal with most data protection issues, we emphasised that *all* those likely to deal with data protection issues should be properly trained and therefore recommended that the PSNI should consider whether its online data protection training should be made compulsory for some staff.<sup>5</sup>

At the time of our 2007 Annual Report, a revised e-learning training package had been installed on the PSNI intranet site and a pilot of the information security aspect of the training was being conducted with student officers.<sup>6</sup> The training package was accessible by all PSNI officers and staff. We therefore considered Recommendation 44 of our 2006 Annual Report to be implemented in full. However, the PSNI had not made it compulsory for officers or support staff to complete the training. In our 2007 Report, we therefore recommended for the second time that the PSNI should identify those members of staff most likely to encounter data protection issues and make training compulsory for them.<sup>7</sup> We also suggested that once the PSNI's pilot with student officers is over, the PSNI should further consider whether data protection training should be made compulsory for student officers.<sup>8</sup>

In June 2008, I wrote to the PSNI regarding the status of implementation of this recommendation and requesting further information about the student officer pilot. The PSNI responded that, rather than identifying members of staff most likely to encounter data protection issues, it has "taken the view that all police

4. Namely, that personal data must be (a) fairly and lawfully processed; (b) processed for limited and lawful purposes; (c) adequate, relevant and not excessive; (d) accurate and kept up to date; (e) kept no longer than necessary; (f) processed in accordance with the rights of the data subject; (g) kept secure; and (h) only transferred to countries with adequate security.

5. 2006 Annual Report, Recommendation 44, p.162.

6. Letter PSNI Data Protection Unit to Policing Board's human rights advisors, dated 20 June 2007.

7. 2007 Annual Report, Recommendation 41.

8. 2007 Annual Report, chapter 14, p.264.

and support staff will encounter data protection issues at some point during their career.”<sup>9</sup> The PSNI referred again to its one-hour data protection awareness presentation given to all student officers and civilian staff when they join the PSNI and stated that the position remains that data protection training is effectively only provided on an identified individual needs basis, for example, as part of the annual appraisal process or if a particular officer’s role involves significant data protection issues. Practical data protection advice is available from the PSNI Data Protection Officer or by utilising the CETIS e-learning training package, which remains the subject of a pilot at the Police College.<sup>10</sup>

This means that two years after our original recommendation in 2006, the PSNI has made no significant changes to training provision on data protection and the online data protection training has not been made compulsory for any PSNI staff. This is a disappointing response by the PSNI, particularly in light of the number of breaches of the Data Protection Act by PSNI staff over the last two years and the Decision Notice issued by the Information Commissioner in 2007. It would appear that the need for some form of compulsory training for PSNI specialist data protection staff has been established.

I have been informed that PSNI Corporate Development has recently proposed to the Police College that all student officers should complete compulsory e-learning packages in data protection, information security, freedom of information and records management during their initial training and that evidence of successful completion of each module should be recorded on student officers’ individual files. I see value in the proposal put forward by PSNI Corporate Development but remain convinced that training should also be made compulsory for specialist data protection staff. Against this background, I withdraw Recommendation 41 of our 2007 Annual Report and replace it with the new recommendation that the PSNI should introduce compulsory e-learning or other training in data protection, information security, freedom of information and records management for all PSNI data protection and freedom of information specialist staff within 12 months of this report and consider introducing compulsory e-learning or other training in data protection, information security, freedom of information and records management as part of student officer foundation training.

**Recommendation 29: The PSNI should introduce compulsory e-learning or other training in data protection, information security, freedom of information and records management for all PSNI data protection and freedom of information specialist staff within 12 months of this report**

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9. Letter ACC Operational Support to Policing Board’s human rights advisor dated 17 July 2007.

10. Letter ACC Operational Support to Policing Board’s human rights advisor dated 17 July 2007.

**and consider introducing compulsory e-learning or other training in data protection, information security, freedom of information and records management as part of student officer foundation training.**

### **Breaches of the Data Protection Act 1998**

Under the Data Protection Act, it is an offence for a person knowingly or recklessly, without the consent of the data controller, to obtain or disclose personal data or information contained in personal data.<sup>11</sup> In our 2007 Annual Report, we reported eight breaches of the Data Protection Act during the period 1 April 2006 to 31 March 2007. In addition, we reported that in April 2007, it emerged that a member of PSNI civilian staff had been allegedly involved in breaches of the Data Protection Act and found in possession of names and addresses likely to be of use to terrorists. We noted the serious concerns this incident raised.

Between 1 April 2007 and 31 March 2008, there were eight alleged breaches of the Data Protection Act by PSNI civilian staff. Of these, one resulted in a conviction for accessing and disclosing information; one resulted in dismissal for disclosing information and four were dealt with by way of informal warnings at district level (one for disclosing information and three for accessing information). Two cases are the subject of ongoing investigations.

As we reported in our 2007 Annual Report, one way in which the PSNI is attempting to identify officers and members of police civilian staff who commit breaches of the Data Protection Act is through random daily audits conducted by the PSNI's Data Protection Unit of the use of the PSNI's computer system. The audits randomly select individuals and question them about their use of the computer information system, including how the information they extracted was recorded and whether it was passed to any other individual(s). The PSNI indicated to us in 2007 that it intended to expand on this initiative. In July 2008, the PSNI informed me that a total of 1,459 random audits were carried out between 1 April 2007 and 31 March 2008.<sup>12</sup> Advice and guidance was given in two cases as a result of the audit process.

The PSNI has now introduced a system of electronic monitoring which allows all activities on its NICHE computer system to be monitored constantly.

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11. Data Protection Act 1998, s.55(1).

12. Letter ACC Operational Support to Policing Board's human rights advisor dated 17 July 2008.

## Requests for personal data

Again, as part of this year's monitoring work, I have analysed the number and outcome (with reasons) of personal data requests. Between 1 April 2007 and 31 March 2008, the PSNI Data Protection Unit received 7,108 requests for personal data.<sup>13</sup> This is a marked increase on the 6,421 requests received in 2006/2007. The outcome of the requests for personal data for 2006/2007 and 2007/2008 respectively are set out in Table 1 below.

**Table 1:**

Requests for personal data 2006/2007-2007/2008

Outcome of requests	Number of Requests	
	2006/2007	2007/2008
Information does not exist	6	4
Existence of information neither confirmed nor denied	11	2
No criminal record	4,551	4,978
Criminal record disclosed	1,320	1,654
All requested information disclosed <sup>14</sup>	283	366
No information held	17	17
Information exempt from disclosure	20	8
Police National Computer only	15	23
Unable to process	155	32
Disclosed in part <sup>15</sup>	35	15
Abandoned by the applicant	8	7
Business as usual	n/a	1
Treated informally	n/a	1
<b>Total*</b>	<b>6,421</b>	<b>7,108</b>

\* The discrepancy in the total number of requests and the recorded outcome of requests is due to the 40-day process overlapping.

As the table demonstrates, during 2007/2008 the PSNI refused to supply personal information on the basis of exemptions under the Data Protection Act in only eight of the 7,108 requests over this period. This compares favourably to the 20 refusals of the 6,421 requests made during 2006/2007. In 2006/2007 the exemptions applied were crime and taxation,<sup>16</sup> right of

13. Letter ACC Operational Support to Policing Board's human rights advisor dated 17 July 2008.

14. Cases not related to criminal record checks.

15. Cases not related to criminal record checks.

16. Data Protection Act 1998, s.29(1).

access,<sup>17</sup> regulatory activity<sup>18</sup> and other miscellaneous exemptions relating to negotiations, examinations and legal professional privilege.<sup>19</sup> In 2007/2008, six of the exemptions related to crime and taxation. The remaining two cases where exemptions were applied related to requests with which PSNI could not comply without releasing the identity of other persons.<sup>20</sup>

### Data protection complaints

In 2007/2008, a total of four complaints were made against the PSNI regarding the disclosure or non-disclosure of personal data.<sup>21</sup> This again compares favourably to the 17 complaints in 2006/2007, eight of which were made directly to the Information Commissioner. Of the four complaints made in 2007/2008, one was made directly to the Information Commissioner. Remedial action was taken by the PSNI resulting in no further action by the Information Commissioner. The other three complaints were made through the PSNI's internal complaints mechanism, however, no further action was required or taken. This is a positive result.

We noted in our 2007 Annual Report that the number of complaints in the 12 month period between April 2006 and March 2007 had more than doubled on the last 12 month period we reported on, when there were only six complaints.<sup>22</sup> I am pleased to record that the number of complaints in 2007/2008 has dropped significantly and returned to below 2005/2006 rates. The Policing Board will continue to monitor the number and types of complaints made against the PSNI regarding the disclosure or non-disclosure of personal data as part of its annual human rights compliance assessment.

## FREEDOM OF INFORMATION

The Freedom of Information Act 2000 created two general rights in relation to recorded information held by public authorities. First, the right to be told whether or not the information requested is held; and second, the right to be given information within 20 working days. There are, however, exemptions. In our 2006 and 2007 Annual Reports, we examined PSNI's Freedom of Information policies, training and publication scheme. I provide a further report below.

### PSNI publication scheme

The Freedom of Information Act requires public authorities to adopt, implement, operate and maintain a publication scheme.<sup>23</sup> The purpose of a publication scheme is to ensure that a large amount of information is readily available to members of the public without the need for specific application under

17. Data Protection Act 1998, s.7(4).

18. Data Protection Act 1998, s.31.

19. Data Protection Act 1998, Sch. 7, ss.7, 8 and 10.

20. Letter ACC Operational Support to Policing Board's human rights advisor dated 18 July 2008, Annex A.

21. For the period 1 April 2007 to 31 March 2008.

22. From 1 January 2005 to 31 December 2005.

23. Freedom of Information Act 2000, s.19.

the Freedom of Information Act. The PSNI has established a publication scheme which includes seven classes of information.<sup>24</sup> PSNI policy indicates that the PSNI publication scheme manager will review its publication scheme from time to time.<sup>25</sup>

In 2007, the PSNI conducted a review of its publication scheme.<sup>26</sup> The PSNI indicated its intention to introduce a disclosure log in the “significant public interest” category within the publication scheme which would include information that had been the subject of a freedom of information request and was in the public interest to disclose.<sup>27</sup> In our 2007 Annual Report, we welcomed the PSNI’s review of its publication scheme. However, we considered it important that a timeline be implemented for introducing the disclosure log and recommended that this be done.<sup>28</sup> We also emphasised, as a matter of general principle, that the obligation of the PSNI to review its publication scheme is ongoing. The PSNI accepted this recommendation. In its Human Rights Programme of Action 2007-2008, the PSNI agreed to review and revise the disclosure log in line with ACPO Guidelines and national best practice.

The PSNI has now introduced its disclosure log.<sup>29</sup> I therefore consider Recommendation 42 of our 2007 Annual Report to be implemented in full. However, I note that the Office of the Information Commissioner has devised a new publications scheme template which is due to be introduced across all police services in the UK (including the PSNI) on 1 January 2009.<sup>30</sup> The Policing Board will monitor the steps taken by the PSNI to adopt the Information Commissioner’s new publications scheme template in the coming months.

### Requests for information

When a request is made for information, the PSNI Freedom of Information Unit will consider the request and identify the PSNI personnel who may hold or have access to the relevant information. In consultation with the department which holds the information, the PSNI Freedom of Information Unit will establish whether compliance with the request can be met, within the statutory fee limit.<sup>31</sup> A response to all information requests should be made within 20 working days of receipt of the request.<sup>32</sup>

Again, as part of this year’s monitoring work, I have analysed the number, type and outcome of requests made to the PSNI under the Freedom of Information Act 2000. In the period 1 April 2007 to 31 March 2008, the PSNI received 741 requests for information under the Freedom of Information Act, an increase on

24. Including Who’s Who and Where, Objectives and Plans, Chief Constable’s Annual Report, Executive Decision Meetings, Policies, How are we going?, Chief Officers Expenses and Significant Public Interest Category.

25. Policy Directive PD 03/04 Freedom of Information Policy.

26. It focused on three areas: an update to the classes of information, the adoption of a disclosure log and review of the practice of releasing information on a discretionary basis. As part of its review, the PSNI added up-to-date information to all seven of its classes of information contained within its publication scheme, including a number of policies and general orders.

27. That is, the information is not of a sensitive nature.

28. 2007 Annual Report, Recommendation 42.

29. The log is based on a corporate template and the Information Commissioner ‘definition document’ issued in June 2008.

30. Letter ACC Operational Support to Policing Board’s human rights advisor dated 17 July 2008.

31. The PSNI may impose charges for providing information. Fees are applied in compliance with the National Fees Regulations published by ACPO. If the cost of responding to the request would exceed the appropriate limit, the applicant is given the opportunity to refine the request. Otherwise, the request may be refused.

32. Freedom of Information Act 2000, s.10.

the 682 requests made in the period 1 April 2006 to 31 March 2007. The main types of requests received by the PSNI related to PSNI budgets; finance and procurement; policies and procedures; personnel issues; operational issues; high profile events; criminal investigations; recruitment and internal discipline matters.<sup>33</sup> Of the 741 requests made, 520 (70%) were closed within 20 working days and 221 (30%) were closed outside the 20-day timeframe. The PSNI has not provided me with the number of cases closed within and outside the agreed timeframe where an extended timeframe was agreed but has informed me that timeframes were exceeded due to the complexity of requests, the application of the public interest test and the need to consult with other parties or to seek legal advice.<sup>34</sup>

Of the requests for information received over the period, 151 were refused by the PSNI. On 72 occasions, requests were refused because the information was not held by the PSNI. An absolute exemption<sup>35</sup> was applied in 29 cases and 50 cases exceeded the statutory fee limit.<sup>36</sup> Exemptions from publication were applied in 93 cases this included requests where the information was fully exempted or partially exempted.<sup>37</sup> The most frequently used exemptions were law enforcement, criminal investigations, health and safety and personal information.<sup>38</sup> During the period 1 April 2007 to 31 March 2008, no charges were levied by the PSNI for information provided in response to a freedom of information request.<sup>39</sup>

I welcome the fact that 70% of requests were closed within 20 working days and recognise that some requests are complex and that it may in reality be impossible to close all requests within agreed timeframes. Nonetheless, it is important that the PSNI should continue to strive to reduce the number of requests closed outside the agreed timeframe.

### Freedom of Information complaints

The PSNI's Freedom of Information Unit received 27 complaints between 1 April 2007 and 31 March 2008. This compares with 33 complaints received in the previous year. In general, the complaints expressed discontent with the nature of the PSNI's response or with the PSNI's withholding of information. 26 of the complaints were processed and one is the subject of an ongoing review. Of the 27 complaints received, eight related to the exemptions applied, two appealed the fact that the appropriate fees limit had been exceeded, 16 were discontent with the response from PSNI and one was dissatisfied that the PSNI did not hold the information. Of the complaints processed, 19 of the original decisions were

33. Letter ACC Operational Support to Policing Board's human rights advisor dated 17 July 2008.

34. Letter ACC Operational Support to Policing Board's human rights advisor dated 17 July 2008.

35. If an absolute exemption applies there is no obligation under the Act to consider the request for information further.

36. Letter ACC Operational Support to Policing Board's human rights advisor dated 17 July 2008.

37. Includes the number of absolute and qualified exemptions applied. Qualified exemptions do not justify withholding information unless, following a proper assessment, the balance of the public interest comes down against disclosure.

38. Letter ACC Operational Support to Policing Board's human rights advisor dated 17 July 2008.

39. Letter ACC Operational Support to Policing Board's human rights advisor dated 17 July 2008.



upheld, two decisions were overturned, one complaint was withdrawn by the requester and four resulted in further information being supplied to the requester. Three complaints were made to the Information Commissioner's Office. Of these, one remains pending.<sup>40</sup>

## INFORMATION COMMISSIONER DECISION AGAINST THE PSNI

During the course of the year, the Information Commissioner<sup>41</sup> investigated the PSNI under the Freedom of Information Act 2000<sup>42</sup> and issued a Decision Notice against the PSNI.<sup>43</sup> I summarise below the nature of the complaint against the PSNI and the main findings of the Office of the Information Commissioner.

The complainant had held a shotgun licence for many years. The PSNI subsequently imposed conditions on his licence, which the complainant wished to appeal. The complainant requested information from the PSNI relating to its policy on shotgun licensing.<sup>44</sup> When he failed to receive any response, he contacted the PSNI on a number of occasions and subsequently resubmitted his request. The PSNI released some of the requested information to the complainant but advised that certain pieces of information were being withheld on the basis of exemptions under the Freedom of Information Act 2000.<sup>45</sup> The complainant requested an internal review. The PSNI did not conduct an internal review, however, it informed the complainant that additional information had been located and released most of this further information to him. Some of the information was withheld under the same exemptions that the PSNI had applied previously.

The complainant subsequently contacted the Information Commissioner regarding the manner in which his request for information had been handled by the PSNI. Further information was disclosed by the PSNI after this date but the complainant remained dissatisfied. He also alleged that, in withholding information that it had subsequently disclosed to him, the PSNI had acted in bad faith.

The Commissioner found that the PSNI had not dealt with the request in accordance with the Freedom of Information Act 2000. Firstly, the PSNI had failed to communicate some of the information requested to the complainant;<sup>46</sup> second, it had failed to respond to the complainant's request within the specified time limit;<sup>47</sup> third, the PSNI had failed to explain why it was applying

40. Email Information Commissioner to Policing Board's human rights advisor dated 18 September 2008.

41. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000.

42. The Commissioner conducted an investigation in relation to s.77 of the Freedom of Information Act 2000. Under s.77, where a request for information has been made and the applicant would have been entitled (subject to payment of any fee) to communication of that information, a public authority is guilty of an offence if it alters, defaces, blocks, erases, destroys or conceals any record held by it, with the intention of preventing the disclosure of the information to which the applicant was entitled.

43. Decision Notice issued 29 October 2007 under s.50 of the Freedom of Information Act 2000 (Decision Notice).

44. The request was made under s.1 of the Freedom of Information Act 2000.

45. Namely, ss.38(1)(a) and (b): health and safety (this exemption may be applied if the disclosure of the requested information would, or would be likely to, endanger the physical or mental health or safety of any individual) and s.40(2): personal information (this exemption may be applied to personal information relating to third parties, i.e. people other than the applicant. The exemption is engaged if disclosure of the personal information would breach any of the data protection principles under the Data Protection Act 1998 or if disclosure would contravene a notice issued by an individual who felt that disclosure would cause damage or distress).

46. Freedom of Information Act 2000, s.1.

47. Freedom of Information Act 2000, s.10.

the exemptions under ss.38 and 40(2)<sup>48</sup> of the Freedom of Information Act to the withheld information;<sup>49</sup> and fourth, the PSNI had failed to provide, as part of its refusal notice, the reasons for claiming that the public interest in maintaining the exemption under s.38 of the Act outweighed the public interest in disclosing the information.<sup>50</sup> The Commissioner was also critical of the way the PSNI handled the complainant's request for an internal review.

The Information Commissioner was so concerned at the PSNI's omissions that he undertook an investigation into the possible commission of a criminal offence by the PSNI.<sup>51</sup> He found that the PSNI had provided the complainant with an inadequate refusal notice and was in breach of the Freedom of Information Act,<sup>52</sup> but concluded that there was insufficient evidence to justify a prosecution.

The Information Commissioner found that the PSNI's failure to provide an adequate explanation raised "serious questions about the quality of the PSNI's request handling and decision making procedures at the time of the complainant's request"<sup>53</sup> and the Commissioner remained "significantly concerned at the PSNI's lack of reasoning behind its decision to withhold information"<sup>54</sup> and strongly recommended that the PSNI revisit its procedures to ensure proper records are kept in relation to the handling of future requests. In his view, basic training would have informed staff that exemptions ought to be applied only to information which is reasonably considered exempt, and then only under the most appropriate exemption.<sup>55</sup>

In terms of remedial action, the Commissioner required the PSNI to release some of the withheld information to the complainant within 35 days of his Decision Notice.

Following the Information Commissioner's Decision Notice, the PSNI initiated a review to identify and address areas of weakness in the processing of freedom of information requests and the application of internal and national procedures and guidance. This review was conducted in liaison with the Information Commissioner and the PSNI is currently implementing a 22-point action plan and briefing the Information Commissioner on progress. In January 2008, the Information Commissioner facilitated a training seminar concerning the application

48. The PSNI applied the s.40(2) exemption to the identities of PSNI staff named in the information requested, and of an ex-police officer who is now deceased. The PSNI advised the Commissioner that there was an expectation among PSNI employees that their personal information would not be disclosed as a matter of course. In its view, it was implicit in an officer's contract of employment that their details would not be released into the public domain unless the officer was of a senior rank. The Commissioner found that the PSNI had correctly applied the exemption under s.40(2) of the Freedom of Information Act to some personal information identifying junior staff, who would probably not have had decision making responsibilities in relation to the information and who would have a greater expectation of confidentiality than those at higher ranks, but that the PSNI should release personal information identifying more senior staff above the rank of Inspector.

49. Freedom of Information Act 2000, s.17(1).

50. Freedom of Information Act 2000, s.17(3). Where a public authority is seeking to rely on a qualified exemption (one subject to the public interest test), it must provide details of the public interest arguments considered for and against disclosure of the requested information. The authority must also explain the balance of these competing arguments. Although

the PSNI did provide details of a harm test, and indicated that this test applied to personal details of individuals contained within the requested information, it did not provide an explanation of how disclosure of the withheld information would, or would be likely to, endanger the physical or mental health, or the physical safety of any individual. It failed to explain therefore how the exemption under s.38 was engaged. Nor had the PSNI explained why exemptions relating to personal information and health and safety were relevant to a request for information such as details of fees payable and cartridge allowances relating to firearms licences, information which would 'clearly not endanger any individual in any way'. The PSNI explained this aspect of the complaint to the Commissioner by the fact that its staff were 'over-cautious' in the early days of the introduction of the Freedom of Information Act.

51. Under s.77 of the Act, *op cit.* at footnote 42.

52. Freedom of Information Act 2000, s.17(1).

53. Decision Notice, para.31.

54. Decision Notice, para.31.

55. Decision Notice, para.32.

of specific exemptions under the Freedom of Information Act 2000 for PSNI freedom of information practitioners. In June 2008, the PSNI held an Information Management Seminar with contributions from senior personnel from the Information Commissioner's Office for senior police officers and managers to raise awareness of freedom of information, data protection, records management and information security matters.

In July 2008, I met with the Information Commissioner to discuss his work with the PSNI. The Information Commissioner stated that the PSNI was investing effort to establish sound internal systems to ensure it fully complies with the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner has reviewed and commented upon PSNI policies on freedom of information and has agreed to advise on the PSNI's revised records management policy in due course. The Commissioner is actively encouraging the PSNI to refer to his Office for expert advice as a matter of standard practice and to invest in further training for specialist PSNI staff. Work still remains to be done to implement the PSNI's 22-point action plan but the Information Commissioner is satisfied, overall, with PSNI progress to date and will continue to monitor PSNI activities to ensure key developments in records management and data protection are implemented.

It is critical that the PSNI continues to build upon the openness and transparency it has shown to date in its approach to requests for information under the Freedom of Information Act. By actively engaging with the public and meeting legitimate requests for information, the PSNI will not only meet its statutory obligations, but will raise the public's awareness of the roles and responsibilities of the PSNI. This has a significant impact on maintaining public confidence in policing. The Policing Board will continue to monitor developments as part of its annual human rights assessment.

## **ACPO REVIEW OF PSNI FREEDOM OF INFORMATION AND DATA PROTECTION FUNCTIONS**

In 2007, we reported on the ACPO review<sup>56</sup> of PSNI freedom of information and data protection functions.<sup>57</sup> ACPO's review found that, overall, the PSNI was operating at a satisfactory or high standard in its compliance with the Data Protection and Freedom of Information Acts. It did, nevertheless, make seven recommendations,<sup>58</sup> noting a number of concerns with the PSNI's freedom

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56. ACPO Freedom of Information Central Referral Unit, Review of the Freedom of Information and Data Protection Act Functions of: Police Service of Northern Ireland, concluded June 2006.

57. 2007 Annual Report, chapter 14, pp.270-272.

58. ACPO Review, para.1.4.

of information decision making processes.<sup>59</sup> In our 2007 Annual Report, we expressed concern that these ACPO recommendations, made as long ago as 2006, did not yet appear to have been implemented. We recommended that the PSNI indicate to us within three months of our 2007 Annual Report which of the ACPO recommendations it accepted and how it intended to implement them.<sup>60</sup> In its 2007-2008 Programme of Action, the PSNI agreed to review the ACPO recommendations in conjunction with its internal freedom of information review. It also undertook to agree a full list of recommendations to be progressed, to agree an implementation plan and assign a Project Manager to report progress to the Information Commissioner by March 2008.

In July 2008, the PSNI informed me that the recommendations of the ACPO report, and the PSNI's response to each, had been discussed at a meeting between the PSNI and the Information Commissioner held on 10 July 2008.<sup>61</sup> The PSNI has now fully implemented the ACPO recommendations. Matters also discussed at this meeting included progress towards the implementation of the 22-point action plan (discussed above) and a communications strategy designed to increase awareness of the importance of freedom of information within the PSNI.

I welcome the necessary remedial work undertaken by the PSNI in conjunction with the Office of the Information Commissioner. Against this background, I consider Recommendation 43 of our 2007 Annual Report to be implemented in full.

## RECORDS MANAGEMENT

A public authority can only fully comply with its obligations under the Freedom of Information Act if the quality of the records to which the Act provides access is maintained. The right to information is of little use if reliable records are not created in the first place, if they cannot be found when needed or if the arrangements for their eventual archiving or destruction are inadequate. It is therefore necessary for a public authority to have an effective records management system in place. This is becoming an ever more urgent requirement in light of the vast numbers of electronic records received, generated and stored by police services. In our 2007 Annual Report, we reviewed the PSNI's records management processes and this year I continued to monitor PSNI's approach to records management.

59. One such concern related to the PSNI's practice of dividing responsibility for decision making between record owners and the central freedom of information team. ACPO recommended that the PSNI central freedom of information team should take responsibility for liaising directly with record owners to establish whether information is held and establish an audit function to check 'no information held' responses from record owners. Moreover, ACPO recommended that the role of record owner should be undertaken by a head or deputy head of each department and established as a standard staff function throughout the PSNI. ACPO also recommended that PSNI Crime Operations adopt the model used by

PSNI Professional Standards which requires record owners to take named responsibility for their own freedom of information decisions.

60. 2007 Annual Report, Recommendation 43.

61. Letter ACC Operational Support to the Policing Board's human rights advisor dated 17 July 2008.

### PSNI records management policy

We reported on the PSNI's records management policy in our 2007 Annual Report.<sup>62</sup> The policy applies to all records<sup>63</sup> created or received by the PSNI, whether maintained at Department or District level. During 2008, the PSNI revised its records management policy. The policy is currently the subject of internal consultation.<sup>64</sup>

### PSNI records management unit

In our 2007 Annual Report, we also reported in some detail on the role of the PSNI Records Management Unit.<sup>65</sup> The description of its functions remains accurate.<sup>66</sup> The PSNI's Records Management Unit monitors the compliance with the records management policy at District and Department level.

### Records management audit

The PSNI's records management policy requires that audits<sup>67</sup> are conducted of records management systems on a regular basis to ensure adherence to the PSNI's records management programme. The Records Manager, Deputy Records Manager and record auditors have responsibility for conducting audits. The PSNI indicated that it would conduct a records management audit in 2007. However, ACC Operational Support has since indicated that he does not intend to proceed with the audit.<sup>68</sup> Instead, the PSNI intends to develop its methodology for record management audits through two pilots: (i) a records management information audit; and (ii) a notebook/journal compliance audit. These pilot audits will be conducted within a PSNI District Command Unit later this year.<sup>69</sup> The Policing Board will monitor progress of these pilot schemes.

### Records management and information security training

The PSNI's records management policy requires that all staff are made aware of their records management responsibilities and are given training according to their role. Training on information security is provided to student officers and civilian staff. Awareness of PSNI records management obligations was raised through the delivery of a number of presentations during 2007 and 2008, including a PSNI seminar held at the Stormont Hotel in May 2008.

### Electronic document records management system

We reported in our 2007 Annual Report that the PSNI was in the process of introducing an electronic document records management system on a

62. 2007 Annual Report, chapter 14, p.273.

63. Defined as recorded information created, received or maintained by the PSNI as part of its day-to-day business and kept as evidence of a decision or action that was undertaken. The term 'record' can refer to information recorded by any means in form of words, symbols, images or impressions, existing in electronic or physical formats.

64. Letter ACC Operational Support to Policing Board's human rights advisor dated 17 July 2008.

65. 2007 Annual report, pp.273-274.

66. Letter ACC Operational Support to Policing Board's human rights advisor dated 17 July 2008.

67. An audit will consider maintenance of the PSNI's electronic document record management system electronic file plan, how documents and records are created, record registration, version control, record security, folder and document titling and record review and disposal.

68. Letter ACC Operational Support to Policing Board's human rights advisor dated 17 July 2008.

69. Letter ACC Operational Support to Policing Board's human rights advisor dated 17 July 2008.

departmental and district basis. The PSNI reported in July 2008 that the introduction of that system was continuing, albeit at a slower rate than originally anticipated due to budgetary constraints.

## POLICE RETENTION OF OLD CRIMINAL RECORDS

In November 2007, following the investigation of complaints from five individuals about the practice of five police forces,<sup>70</sup> the Office of the Information Commissioner concluded that the current practice of retaining old criminal conviction data<sup>71</sup> was excessive for policing purposes. The Office of the Information Commissioner therefore issued the five police forces with Enforcement Notices requiring the data to be deleted. The five police forces challenged the Notices and appealed to the Information Tribunal, seeking to rely, amongst other things, on 2006 ACPO guidelines on the retention of records<sup>72</sup> to justify their continued retention of old criminal conviction data.

In July 2008, the Information Tribunal upheld the decision of the Office of the Information Commissioner and ruled<sup>73</sup> that the retention of old convictions data by police forces is in breach of the Data Protection Act 1998.<sup>74</sup> The Tribunal found that ECHR Article 8 is engaged by the processing of data, of which the holding or retention of personal data is just one aspect. Chief Constables as data controllers are required to process personal data, including criminal conviction data, in accordance with their statutory obligations under the Data Protection Act 1998 and the Human Rights Act 1998. Any advice or guidance from ACPO cannot replace, or displace, that responsibility. The Chief Constable's responsibility is to consider each case of the removal of conviction data from the Police National Computer on its own merits.

The Tribunal therefore upheld the Enforcement Notices issued by the Information Commissioner which required the erasure of the old criminal conviction data at issue in the appeals. It also indicated that the 2006 ACPO Guidelines did not appear to be a suitable approach to the retention of old criminal conviction data in order to comply with the Data Protection Act 1998.

This decision of the Information Tribunal obviously has a direct and significant impact on the PSNI's policy on the retention of old criminal conviction data. I therefore make the recommendation that the PSNI should report to the Policing Board on the steps it has taken or intends to take in response to the Information Tribunal's decision on the retention of old criminal conviction data within three months of the publication of this report.

70. Humberside, Northumbria, Staffordshire, Greater Manchester and West Midlands Police.

71. Part V of the Police Act 1997 provides for the disclosure of criminal convictions, cautions, reprimands and other information by the Secretary of State of the Home Office to prescribed persons. The Enforcement Notices in the appeals arose due to the Chief Constables, through the National Identification Service, disclosing to the Criminal Records Bureau (CRB) the conviction data of the five complainants held on the Police National Computer so that the CRB could respond to requests for criminal records certificates.

72. ACPO, Retention Guidelines for Nominal Records on the Police National Computer, March 2006.

73. *Chief Constables of Humberside, Northumbria, Staffordshire, Greater Manchester and West Midlands Police v The Information Commissioner*, Information Tribunal Appeal No.s EA/2007/0096,98,99,108,127 heard 8-18 April 2008.

74. The Data Protection Act requires that personal information processed for any purpose should be adequate, relevant and not excessive, and should not be kept for longer than is necessary for that purpose.

**Recommendation 30: The PSNI should report to the Policing Board on the steps it has taken or intends to take in response to the Information Tribunal's decision on the retention of old criminal conviction data within three months of the publication of this report.**

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# Chapter 15: CHILDREN AND YOUNG PEOPLE

The United Nations Convention on the Rights of the Child sets out the rights of all children and young people up to the age of 18 years. The UK ratified the Convention on the Rights of the Child in December 1991 and is therefore obliged to ensure that every child has all the rights<sup>1</sup> set out in the Convention.<sup>2</sup>

# 15



In 2006, we were requested by the Policing Board to examine the PSNI's approach to policing children and young people. As part of our monitoring work in 2007, we audited PSNI policies and procedures on policing children and young people and evaluated various elements of police training relating to children and young people.

As part of this year's monitoring work, I have continued to monitor PSNI's approach to policing children and young people. I report specifically on revisions made by the PSNI to its approach to operations concerning children and young people in chapter 4 of this report and to its policy on Attenuating Energy Projectiles (AEPs) in chapter 8. In this chapter, I continue to monitor the PSNI Youth Diversion Scheme and use of anti-social behaviour orders. I report on the current position regarding DNA retention and the use of children as covert human intelligence sources. I also report on an innovative community project involving the PSNI and children and young people in North Belfast.

## **POLICIES ON POLICING WITH CHILDREN AND YOUNG PEOPLE**

In our 2007 Annual Report, we audited PSNI policies on policing with children and young people. During 2007/2008, a number of these policies were reviewed and revised. I discuss these updated policies in this section.

### **PSNI policy on policing with children and young people**

The PSNI policy on policing with children and young people was reviewed and revised on 16 May 2008.<sup>3</sup> The revised policy was the subject of internal and external consultation. External consultees included young people from PSNI's Independent Advisory Groups. The policy has been produced in a child friendly format which has been distributed widely both internally and to the general public.<sup>4</sup>

The PSNI policy provides guidance to police officers in managing children and young people coming into contact with the criminal justice system by providing a general framework for interaction with children and young people to make officers more confident. It is based on the aims and objectives of the ACPO strategy for children and young people and seeks to apply the standards of the UN Convention on the Rights of the Child. I have reported on the revised policy in more detail in chapter 4 of this report.

1. These include the right to life, survival and development; the right to have their views respected, and to have their best interests considered at all times; the right to a name and nationality, freedom of expression, and access to information concerning them; the right to live in a family environment or alternative care; the right to health and health care, including rights for disabled children; the right to education and leisure; special protection for refugee children, children in the juvenile justice system, children deprived of their liberty and children suffering economic, sexual or other forms of exploitation.

2. Except in those areas where the Government has entered a specific reservation.

3. PD 13/06: PSNI Policing with Children and Young People.

4. Email PSNI Criminal Justice to Policing Board's human rights advisor dated 12 September 2008.

## PSNI child protection policy

The PSNI's child protection policy<sup>5</sup> provides the overarching standards for police conduct in interactions with children and young people.<sup>6</sup> It is based on ACPO guidance.<sup>7</sup> Detailed guidance is provided to officers on, amongst other issues, disclosure, the child protection case conference procedure, health and safety requirements when working with children, investigative interviews with children and how to respond to bullying. In our 2007 Annual Report, we noted that several parts of the policy do not refer to, or are not entirely consistent with, other PSNI policy and guidance.<sup>8</sup> Whilst we concluded that these findings did not warrant a recommendation, we highlighted them to PSNI Operational Support for consideration.

The PSNI is soon to publish a Service Vetting Policy. The policy will require all PSNI officers and staff to be vetted and given a vetting designation according to his or her role. In advance of publication the PSNI has already begun to vet officers who are employed within Public Protection Units.<sup>9</sup> Public Protection Units include specialist officers investigating child abuse, domestic abuse, missing persons and officers managing the risk posed by sex offenders.

## PSNI YOUTH DIVERSION SCHEME

In our 2007 Annual Report, we reported on the PSNI youth diversion scheme, examining the PSNI youth diversion policy, statistics on diversionary disposals and the findings of an equality impact assessment of the scheme. This year, I continued to monitor the PSNI's youth diversion scheme. I report under various headings below.

### Diversions disposals

Table 1 sets out the diversionary disposals given by the PSNI to children and young people, by category of misconduct, between 1 July 2007 and 30 June 2008. Diversionary disposals generally relate to criminal behaviour. These disposals are given out in an attempt to divert children and young people from formal proceedings and sanctions under the criminal justice system. The types of disposal available include advice from the investigating officer, letter to a parent or guardian and referral to an external agency. In total, there were 9,502 diversionary disposals given to children and young people by the PSNI between 1 July 2007 and 30 June 2008. As Table 1 demonstrates, the highest number of diversionary disposals was for youths causing annoyance (2,265), general misbehaviour (2,083) and alcohol related behaviour (1,433). The most common disposals

5. Policy Directive PD 2006/2005, Police Service of Northern Ireland Child Protection Policy.

6. The standards relate to the following areas: investigation of child abuse; information sharing for the purpose of child protection; police attendance at child protection case conferences; interaction with children as members of the community; vetting requirements for officers and support staff coming into contact with children and young people; children as victims of crime; children as perpetrators of crime; children as witnesses of crime; children as covert human intelligence sources; children in

domestic incidents; procedures for dealing with allegations of child abuse made against police officers and police support staff; dealing with bullying; child protection training; and, personnel issues, supervision and management.

7. ACPO Guidance on Child Protection and Safeguarding Children (2005).

8. 2007 Annual Report, chapter 15, p.279.

9. Email PSNI Criminal Justice to Policing Board's human rights advisor dated 12 September 2008.

were advice from the investigating officer or a letter to a parent or guardian. There were a total of 449 diversionary disposals imposed for anti-social behaviour and 480 disposals imposed for common assault over the period.

**Table 1:**

PSNI diversionary disposals given to children and young people by category of misconduct, 1 July 2007-30 June 2008

Disposal decision	Advice from Investigating Officer	Letter to parent/guardian	Other	Referral to external agency	Totals
Arson	4	0	4	2	10
Burglary	1	0	4	0	5
Common assault	107	9	313	51	480
Criminal damage	93	29	82	4	208
Cruelty	1	0	1	7	9
Disorderly behaviour	32	18	11	0	61
Drugs	19	4	2	7	32
Grievous Bodily Harm	1	0	10	2	13
General misbehaviour	898	868	246	71	2,083
Hoax calls	13	7	9	2	31
Sexual offences	11	1	58	36	106
Missing person	219	52	1,214	475	1,960
Motoring	38	10	1	0	49
Offensive weapon	3	2	5	0	10
Public order related	19	1	46	0	66
Robbery	0	0	2	0	2
Theft	58	7	51	3	119
Youth causing annoyance	865	1,208	138	54	2,265
Alcohol related	401	831	164	37	1,433
Assault Occasioning Actual Bodily Harm	16	3	78	5	102
Anti-social behaviour	159	236	54	0	449
Victim	2	0	2	5	9
Threats to kill	0	0	0	0	0
Breach of ASBO	0	0	0	0	0
<b>Total</b>	<b>2,960</b>	<b>3,286</b>	<b>2,495</b>	<b>761</b>	<b>9,502</b>

Table 2 sets out the recommendations made by PSNI Youth Diversion Officers to the Public Prosecution Service (PPS), together with outcomes, between 1 July 2007 and 30 June 2008. Youth Diversion Officers made a total of 8,186 recommendations to the PPS over the period. The PPS endorsed 6,600 (81%) of these recommendations. As Table 2 indicates, the highest number of recommendations made by the PSNI were for prosecution (2,996) followed by recommendations for informed warnings (1,785). Restorative cautions and youth conferencing accounted for 25% of all PSNI recommendations made to the PPS over the period.

**Table 2:**

PSNI Recommendations to the PPS, 1 July 2007-30 June 2008

Sanction	YDO Recommendations	PPS Decisions
Informed warning	1,785	1,487
Restorative caution	1,398	1,063
Youth Conferencing	639	535
Court prosecution	2,996	1,651
No prosecution	1,368	1,864
<b>Total</b>	<b>8,186</b>	<b>6,600</b>

PSNI Community Safety branch meets on a quarterly basis with the Public Protection Service to ensure the processes and practices in relation to youth related cases are dealt with efficiently and effectively between both organisations.<sup>10</sup>

### Youth Diversion Scheme equality impact assessment

In our 2007 Annual Report, we discussed the equality impact assessment (EQIA) conducted by the PSNI in 2007 on its Youth Diversion Scheme.<sup>11</sup> The EQIA considered the number of cases resulting in referrals to the Youth Diversion Scheme, Youth Diversion Officer recommendations for case disposals<sup>12</sup> and case outcomes<sup>13</sup> according to age, sex and religion. It made a number of findings which we set out in full in our 2007 Annual Report.<sup>14</sup> I do not repeat them here. The PSNI indicated that it would implement a number of initiatives in response to concerns arising out of the EQIA. These included the review of procedures and protocols with the PPS to ensure minimal delay between referral and decision; the revision of PSNI policy on the Youth Diversion Scheme and

10. Email PSNI Criminal Justice to Policing Board's human rights advisor dated 12 September 2008

11. PSNI, Section 75 Equality Impact Assessment: Youth Diversion Scheme, May 2007.

12. YDO recommendation as to disposal type, i.e. an informed warning, a restorative caution or prosecution. In some cases the recommendation was pending or not known.

13. Decisions by PPS or PSNI Criminal Justice Managers as to disposal type.

14. 2007 Annual Report, chapter 15, pp.283-286.

the improvement of training for its Youth Diversion Officers. We stated in our 2007 Annual Report that we would monitor the PSNI's progress in implementing the initiatives it had outlined as part of this year's monitoring work.<sup>15</sup>

PSNI Community Safety branch has introduced a new database to collate and monitor information and data relating to young people involved in risk taking and/or criminal behaviour and is working with the Youth Justice Agency to streamline services through an information sharing protocol. PSNI Community Safety branch and the Police College have introduced a programme of youth consultation evenings with student officers and young people from different backgrounds. The PSNI is also progressing work in partnership with Include Youth to extend consultation to the Juvenile Justice Centre to obtain the views of marginalised children and young people.

### Youth Diversion Officer Training

In our 2007 Annual Report, we made a number of minor suggestions regarding the training provided to PSNI Youth Diversion Officers (YDOs) and other officers carrying out restorative processes within Districts.<sup>16</sup> PSNI Community Safety branch met with the trainers to ensure the suggestions that we made were incorporated within the training.<sup>17</sup> In 2007, PSNI Community Safety branch commissioned an evaluation of the PSNI Youth Diversion Scheme by an external consultant. The external evaluation highlighted the need for additional training for YDOs. PSNI Community Safety branch has carried out a training needs analysis on how to deal with (i) mental health issues, (ii) disability issues and (iii) conflict within the context of the youth conference model. A new training module is being developed to address these needs with an external consultant and will be provided to all newly appointed YDOs.<sup>18</sup>

## ANTI-SOCIAL BEHAVIOUR

In our 2007 Annual Report, we reviewed PSNI policy on anti-social behaviour orders<sup>19</sup> and analysed PSNI anti-social behaviour statistics.<sup>20</sup> Anti-social behaviour orders relate to behaviour that causes harassment, alarm or distress. Such behaviour is not necessarily criminal. This year I again monitored PSNI statistics on anti-social behaviour orders. There have been 82 anti-social behaviour orders issued in Northern Ireland in the period 2004 to September 2008. 74 of these ASBO's were granted to the PSNI. The remainder were to local councils or the Northern Ireland Housing Executive. These included reports on noise, rowdy/

15. 2007 Annual Report, chapter 15, p.286.

16. 2007 Annual Report, chapter 10, p.216.

17. Letter PSNI Criminal Justice to Policing Board's human rights advisor dated 22 August 2008.

18. Letter PSNI Criminal Justice to Policing Board's human rights advisor dated 22 August 2008.

19. A civil order made by the magistrate's court which prohibits the defendant from doing anything described in the order.

20. 2007 Annual Report, chapter 15, pp.286-289.

nuisance neighbours, street drinking and vehicle nuisance/inappropriate vehicle use and of animal problems.

During 2008, the Criminal Justice Inspectorate (CJI) conducted a review into the use of anti-social behaviour orders by relevant criminal justice agencies. The CJI review included a comprehensive review of PSNI use of anti-social behaviour orders.<sup>21</sup> This review will be issued in the coming months. The Policing Board will consider the findings of the CJI review and the PSNI response to it.

## CHILDREN AS COVERT HUMAN INTELLIGENCE SOURCES

In light of continuing public concern regarding the use of children as covert human intelligence sources, as part of this year's monitoring work I again met with senior officers in PSNI Crime Operations to discuss PSNI policy in this area.

In our 2007 Annual Report, we recorded that the PSNI's child protection policy provides guidance to officers on the use of children as covert human intelligence sources. A juvenile source is defined as a source under 18 years old. The policy states that PSNI practice on the use of juvenile sources, must comply with the ACPO Manual of Minimum Standards for Covert Human Intelligence Sources.<sup>22</sup> Special safeguards apply to the authorisation of the use of juvenile sources. On no occasion can authorisation be given for a child under 16 years old and living with their parents, to give information against their parents. In all other cases authorisation may be given, but only according to specific additional safeguards.<sup>23</sup>

During my discussions with senior officers in PSNI Crime Operations regarding the PSNI policy on the use of children as covert human intelligence sources, it was emphasised that authorisation for the use of juvenile sources must be given by an Assistant Chief Constable rank. The authorisation is valid for one month, with the possibility of renewal for a further month. The officers made clear that the use of a juvenile source would only be considered by the PSNI in exceptional circumstances.

21. Letter PSNI Criminal Justice to Policing Board's human rights advisor dated 22 August 2008.

22. Manual of Minimum Standards for Covert Human Intelligence Sources, ss.6.24-6.28.

23. First, only in exceptional circumstances may a juvenile source be used to provide information about members of their immediate family. Second, a parent, guardian or other appropriate adult must be present at meetings with the juvenile source. In addition, the safety and welfare of the juvenile source must be considered and any risk explained to and understood by the juvenile prior to authorisation. A risk assessment must also be undertaken.

## RETENTION OF DNA

We reported in our 2007 Annual Report that during 2006/2007, several groups and individuals raised significant concerns with the Policing Board regarding the PSNI's retention of the DNA of children and young people. I discuss this further in chapter 3 of this report.

## PUBLIC PROTECTION UNITS

In our 2007 Annual Report, we reported that the PSNI intended to establish Public Protection Units in each of its eight new District Command Units (DCUs).<sup>24</sup> The Public Protection Units are responsible for child abuse investigations, domestic abuse investigations, sex offender management and missing and vulnerable persons.<sup>25</sup> In our 2007 Annual Report, we stated that we would monitor the PSNI's establishment of the Public Protection Units and report further in this year's annual report. In addition, we recommended that the PSNI should report by January 2008 on its progress in establishing the Public Protection Units within each of its eight DCUs.<sup>26</sup>

The PSNI accepted our recommendation.<sup>27</sup> ACC Criminal Justice provided a written report on progress in establishing the Public Protection Units in December 2007.<sup>28</sup> I therefore consider Recommendation 44 of our 2007 Annual Report to be implemented in full. The PSNI has recently provided me with a further update on the activities of the Public Protection Units.<sup>29</sup> Public Protection Units have now been established in every DCU. A PSNI service procedure on the structure and operation of the Units has been developed and should be issued shortly. The Police College intends to provide training to specialist officers within the Public Protection Units on child abuse investigations, specialist interviews for vulnerable adults and children and dealing with sex offenders. The PSNI will be conducting a post-implementation review of the Public Protection Units in September 2008.<sup>30</sup>

## PARTNERSHIP WORK

In our 2007 Annual Report, we outlined a number of external committees, forums and programmes with which the PSNI was involved in relation to child protection matters.<sup>31</sup> We also reported on a number of smaller scale outreach initiatives with which the PSNI was engaged. As part of this year's work, I have been monitoring an innovative local community project that has been established in North Belfast. I report on this project below.

24. In response to the HMIC October 2006 Baseline Assessment of the PSNI which identified the need for the PSNI to streamline the multiple structures dealing with child protection and the investigation of domestic abuse, including child abuse, across the PSNI.

25. 2007 Annual Report, chapter 15, pp.291-292.

26. 2007 Annual Report, Recommendation 44.

27. PSNI Human Rights Programme of Action 2007-2008, p.8.

28. Letter ACC Criminal Justice to Policing Board's human rights advisor dated 21 December 2007.

29. Letter PSNI Criminal Justice to Policing Board's human rights advisor dated 22 August 2008.

30. Letter PSNI Criminal Justice to Policing Board's human rights advisor dated 22 August 2008.

31. Including Area Child Protection Committees, Area Children and Young People's Committees, protocol for joint investigations of child abuse by social workers and police officers: 2007 Annual Report, chapter 15, pp. 292-294.

## Young Voices North Belfast Project

In 2005, the Policing Board published a report (prepared by the Institute of Conflict Research) into young people's attitudes and experiences of policing, violence and community safety in North Belfast.<sup>32</sup> The report indicated that many young people in the area had poor experiences and negative views of the police: over 65% of respondents thought that the police did not understand the issues and problems experienced by young people in North Belfast. The suspicion of the police held by many people in North Belfast and continuing community tensions combine to make the area a particularly challenging one to police. The report highlighted that of the calls routinely received by North Belfast police, 32% were for incidents of 'youths causing annoyance'.

In response to this report, the North Belfast District Command Team (now 'A' District) approached Include Youth, an independent grass roots voluntary organisation working with children and young people at risk of entering the care or criminal justice systems, to develop a joint project involving police officers and young people in North Belfast.

The Young Voices North Belfast Project was established in early 2006. It was funded by the PSNI Policing with the Community Fund and managed by Include Youth. A project worker was appointed in April 2006. The model adopted by the project was undertaken in partnership with young people, local community/youth groups and the PSNI.

In summary, the project involved the following elements:<sup>33</sup>

1. Relationship building between the project worker, local communities and community/youth groups.
2. Informal meetings between the project worker and young people.
3. Phase One with young people: focus groups involving 407 young people from 42 community groups, youth organisations and schools. The focus groups addressed issues of concern to young people regarding the policing in the local area.<sup>34</sup>
4. Police engagement: six training and information seminars were delivered to around 70 police officers (of a variety of ranks and sector areas) based in North Belfast.

<sup>32</sup>. Policing Board, Young people's attitudes and experiences of policing, violence and community safety in North Belfast, June 2005.

<sup>33</sup>. Include Youth, Young Voices North Belfast Evaluation, July 2008.

<sup>34</sup>. Of the 407 young people involved, 160 were from a Catholic background and 247 were from a Protestant background; 173 were young men and 234 were young women.



5. Engagement with local policing structures: the project worker met with and reported to the District Policing Partnerships and local Community Police Liaison Committees.
6. Phase Two with young people: 14 groups of young people,<sup>35</sup> youth community workers and local PSNI officers met to discuss local policing issues. Activities facilitated during the second phase included discussions on police powers in relation to stop and search, alcohol and drug seizures, rioting and public order; visits to local police stations to meet local community officers; visits to the PSNI Police College at Garnerville and PSNI Steeple training centre and attendance at District Policing Partnerships meetings.

The project was internally evaluated by Include Youth during April and May 2008.<sup>36</sup> The evaluation made a number of findings, identifying strengths and weaknesses of the project, which I set out in brief below.

The strengths of the project were identified as follows:

- a. Independence of project.
- b. Project worker's non-confrontational and non-directional approach to engaging with all groups.
- c. Willingness of young people to participate.
- d. Commitment of police and youth/community workers.
- e. Management of the project to suit the pace of all participants.

The weaknesses of the project were identified as follows:

- f. Lack of consultation and partnership with local communities during the development of the project.
- g. Rigidity of policing structures which meant police officers often were not available to attend meetings or training and information sessions.
- h. Lack of engagement of police officers in some areas.

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35. Of the young people involved, 62 were from a Catholic background and 105 were from a Protestant background; 110 were young men and 57 were young women.

36. There were three components to the evaluation: (i) anonymous questionnaire circulated to young people, youth/community workers and police officers involved in the project; (ii) focus groups with young people and police officers who took part in the project and (iii) personal interviews with youth/community workers.

i. Lack of sustainable resourcing for the project.

The evaluation report was discussed by young people, police and community workers involved in the project, together with representatives from a number of other organisations and agencies, at an event in May 2008. I observed this event which was inclusive, consultative and well focused. A number of recommendations emerged from the event, including endorsement of the project model,<sup>37</sup> a recommendation that more police officers (particularly from response units) should be enabled to participate in the project,<sup>38</sup> a recommendation that the project should develop links with other services and organisations which can offer it support<sup>39</sup> and a recommendation that the project should be extended across the North Belfast area and more widely.<sup>40</sup>

The Young Voices North Belfast Project is a creative and imaginative grass roots project. It successfully created an environment in which police officers and children and young people working and living in North Belfast could meet together to discuss policing in the local area. It was clear from the evaluation event which I attended in May 2008 that previously held opinions about police officers and policing practice on the one hand and the concerns of children and young people on the other, which were often negative and uninformed, had been significantly challenged, if not altered, by this process. This kind of partnership work should be encouraged and sustained over the long term.

## FUTURE MONITORING WORK

The Policing Board will continue to monitor the PSNI's approach to policing children and young people and the impact policing initiatives have on children and young people as part of its annual human rights compliance assessment. In particular, as part of its monitoring work next year, the Policing Board will examine in more detail the PSNI's approach to training officers about the rights of children and young people.

The Policing Board intends to build on this work and to conduct a more focused, in-depth examination into particular aspects of the PSNI's approach to policing children and young people in a future human rights thematic.

37. Include Youth, Young Voices North Belfast Evaluation, July 2008, Recommendation 1.

38. Include Youth, Young Voices North Belfast Evaluation, July 2008, Recommendation 2.

39. Include Youth, Young Voices North Belfast Evaluation, July 2008, Recommendation 5.

40. Include Youth, Young Voices North Belfast Evaluation, July 2008, Recommendations 3 and 6.



# Appendix 1:

## 2008 RECOMMENDATIONS

<b>HUMAN RIGHTS ANNUAL REPORT RECOMMENDATIONS 2008</b>	
<b>CHAPTER 1: THE PSNI PROGRAMME OF ACTION</b>	
1	The PSNI should draw up and publish an annual Human Rights Programme of Action within three months of the Policing Board's human rights annual reports.
<b>CHAPTER 2: TRAINING</b>	
2	The PSNI should recruit a human rights training adviser without delay.
3	The PSNI should provide evidence to the Policing Board of the adoption and incorporation of the recommendations set out in the PSNI human rights training adviser's 2007 report into standard PSNI training design within six months of the publication of this report.
4	The PSNI should put in place the regulatory framework for a bi-annual audit of training materials within the next six months.
5	The PSNI should provide the Policing Board's human rights advisor with a schedule of all new district training courses devised by the Police College, the joint forum and/or district trainers, together with course outlines and materials, within six months of the publication of this report.
6	The PSNI internal evaluation team should evaluate the integration of human rights principles in the practical aspects of PSNI personal safety training courses within the next 12 months.
7	The PSNI should continue to develop, on an ongoing basis, a series of appropriate case summaries for use in the firearms refresher training which reflect relevant developments in human rights standards and principles.
8	Following the appointment of a human rights training adviser, the PSNI should re-instate annual bespoke human rights refresher courses for each of its specialist training teams delivered by the human rights training adviser.
9	The Police College should review the concerns raised by the internal evaluation team regarding training on the use of force and consider how best to remedy the identified lack of familiarity with the differing tests for the use of force on the parts of some trainers.
10	The PSNI internal evaluation team should conduct no less than 45 evaluations of PSNI training courses delivered by the PSNI over the next 12 months and report its findings and recommendations to the Policing Board on a quarterly basis.
<b>CHAPTER 3: POLICY</b>	
11	The PSNI should complete its internal review of all current policy directives and service procedures by the end of December 2008 and formally report to the Policing Board in January 2009.
12	The PSNI should report to the Policing Board on the findings of the two dip-sampling exercises completed in 2008/2009 as part of the quality assurance element of the internal policy review and action taken by the PSNI in response to any deficiencies identified in the policies and procedures sampled.

13	The PSNI should provide evidence to the Policing Board of the measures it takes to ensure that reference is made, as a matter of standard practice, to current PSNI policies and procedures in Police College and District training programmes, in operational planning and in supervisor's daily taskings and briefings to officers.
14	The PSNI should make the policy writers' workshop mandatory for all PSNI officers and staff who develop, draft or review PSNI policies and procedures.
<b>CHAPTER 4: OPERATIONS</b>	
15	The PSNI should analyse its figures for stop and search for the period 2006-2008 to ascertain the reasons for the substantial increase in the use of police powers under s.44 of the Terrorism Act 2000 and the substantial decrease in the use of police powers under s.84 of the Terrorism Act 2000, now replaced by s.24 of the Justice and Security (Northern Ireland) Act 2007 and s.89 of the Terrorism Act 2000, now replaced by s.21 of the Justice and Security (Northern Ireland) Act 2007, to ensure that all such powers used are justified, necessary and proportionate.
<b>CHAPTER 5: ADHERENCE TO THE CODE OF ETHICS</b>	
16	The PSNI should provide to the Policing Board on a six monthly basis details of the number of breaches of each of the Articles of the Code of Ethics, the nature of the misconduct causing the breaches and the disciplinary action taken by the PSNI in relation to the breaches.
<b>CHAPTER 6: COMPLAINTS, DISCIPLINE AND CIVIL ACTIONS</b>	
17	The PSNI Professional Standards Department should work with the Police Ombudsman to devise a process to enable a proper analysis of the causes of the increase in the total number of complaints against officers with three or more complaints and provide that analysis to the Policing Board.
18	The PSNI should amend its Integrity and Professional Standards policy so that any officer who is suspended from duty or under serious criminal or disciplinary investigation may not give notice of intention to resign or retire unless the Chief Constable consents.
19	The PSNI Professional Standards Department should provide summary details of the number and types of misconduct investigations returned to Districts and any disciplinary action taken by District Commanders to the Policing Board on an annual basis.
<b>CHAPTER 7: PUBLIC ORDER</b>	
20	The PSNI should conduct public order training on human rights, public processions legislation and public order legislation on a bi-annual basis, subject to any significant developments or changes in the legal framework when training should be conducted forthwith.
<b>CHAPTER 8: USE OF FORCE</b>	
21	The PSNI should provide the Policing Board with statistics on all categories of uses of force recorded on the PSNI electronic use of force monitoring system on a six monthly basis.
22	The PSNI should amend its AEP policy to include guidelines that reflect the following: "The younger the individual against whom an AEP is used, the stronger the justification for use will have to be. Moreover, below a certain age, it is difficult to envisage any circumstances when the use of AEPs will be justified."
23	The PSNI internal evaluation team should evaluate the AEP initial and refresher training courses and report its findings to the Policing Board within six months of the publication of this report.
<b>CHAPTER 9: COVERT POLICING</b>	
24	The PSNI should complete its review of all intelligence policies, procedures and protocols and develop an overarching policy on the management of intelligence within twelve months of the publication of this report but should report to the Policing Board on the progress of its review within six months of the publication of this report.
<b>CHAPTER 10: VICTIMS' RIGHTS</b>	
	No recommendations.
<b>CHAPTER 11: TREATMENT OF SUSPECTS</b>	
25	The PSNI should respond promptly to concerns raised by custody visitors and report action taken in response to those concerns to the Policing Board in a timely manner.
26	The Policing Board should review its system for monitoring concerns raised by custody visiting teams to ensure first, that the PSNI responds to concerns in a satisfactory and timely manner and second, that action taken by the PSNI is recorded by the Policing Board and communicated to the relevant custody visiting team.

27	The Policing Board should consider establishing a protocol whereby each of the Policing Board's custody visiting teams makes a public presentation on its activities and any concerns it has regarding treatment of detainees or conditions of detention to a District Policing Partnership within its area.
28	The PSNI and the Policing Board should agree a process to allow custody visitors to inspect non-designated places of detention.
<b>CHAPTER 12: HUMAN RIGHTS AWARENESS</b>	
	No recommendations.
<b>CHAPTER 13: POLICING WITH THE COMMUNITY</b>	
	No recommendations.
<b>CHAPTER 14: PRIVACY AND DATA PROTECTION</b>	
29	The PSNI should introduce compulsory e-learning or other training in data protection, information security, freedom of information and records management for all PSNI data protection and freedom of information specialist staff within 12 months of the publication of this report and consider introducing compulsory e-learning or other training in data protection, information security, freedom of information and records management as part of student officer foundation training.
30	The PSNI should report to the Policing Board on the steps it has taken or intends to take in response to the Information Tribunal's decision on the retention of old criminal conviction data within three months of the publication of this report.
<b>CHAPTER 15: CHILDREN AND YOUNG PEOPLE</b>	
	No recommendations.



# Appendix 2:

## RECOMMENDATIONS

### 2005 - 2007

<b>HUMAN RIGHTS ANNUAL REPORT RECOMMENDATIONS 2005 - 2007</b>						
<b>Status of Implementation</b>						
		Full	Part	Outs.	Adj.	W/D
<b>CHAPTER 1: THE PSNI PROGRAMME OF ACTION</b>						
2007 Recommendations						
1.	The PSNI should draw up and publish an annual human rights programme of action within three months of our human rights annual reports on an ongoing basis.	X				
<b>CHAPTER 2: TRAINING</b>						
2007 Recommendations						
2.	The PSNI should produce a report in March 2008 setting out the outcomes and findings to date of the audit of district training materials.					X
3.	The PSNI should report in January 2008 on its progress in establishing the Professional Development Units within each of its eight DCUs and the establishment of a central team based at Garnerville to assist and support district trainers in the provision of training at district level.	X				
4.	The PSNI internal evaluation team should evaluate the effectiveness of the human rights and use of force element of the firearms refresher training within nine months of this report.	X				
5.	The PSNI should appoint human rights champions within each of its specialist training teams, and make a mandatory requirement of the role that all human rights champions complete the human rights short course in the first year of their appointment.	X				
2006 Recommendations						
2.	The PSNI should conduct a thorough audit of all PSNI training materials within six months of this Human Rights Annual Report 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.	X				



		Full	Part	Outs.	Adj.	W/D
8.	The PSNI should introduce within the next 12 months a programme of human rights specific refresher training, which should be offered in a strategic and targeted way and include 'bespoke' scenarios tailored to the operational roles of officers.	X				
9.	Each PSNI District Command Team should devise its own approach to district level human rights refresher training.	X				
12.	The PSNI should put in place a scheme for the expert and comprehensive evaluation of the delivery of PSNI training on human rights by December 2006.	X				
<b>2005 Recommendations</b>						
4	The PSNI should 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.	X				
7	The PSNI should put in place a scheme for the expert and comprehensive external evaluation of the delivery of PSNI training on human rights. In the event that the PSNI does not put in place such a scheme, the Policing Board should do so.	X				
<b>CHAPTER 3: POLICY</b>						
<b>2007 Recommendations</b>						
6.	The PSNI should formally report to the Policing Board within three months, explaining the situation and detailing the methodology adopted in the review so far with a strict and detailed timetable for completion of the exercise.	X				
7.	The PSNI should monitor how police officers access and make reference to PSNI policies and what steps are taken by PSNI Operational Support department to highlight the introduction of new or amended policies to officers.	X				
8.	The PSNI should speed up the process of making more of its policies available to the public.	X				
<b>2006 Recommendations</b>						
13.	The PSNI should complete the exercise of verifying all existing policies, forthwith.	X				
14.	The PSNI should complete its substantive review of all existing PSNI policies for compliance with the General Order on Policy, Procedure and Guidance by March 2007.					X
15.	The PSNI should complete its review of how policies considered too sensitive to be generally available on the PSNI intranet site are to be indexed, updated and kept, forthwith.					X
16.	The PSNI should speed up the process of making more of its policies available to the public.	X				
<b>2005 Recommendations</b>						
9.	All PSNI policy should be reviewed using the General Order on Policy, Procedure and Guidance within twelve months of this report.					X
10.	The PSNI should review how those policies considered too sensitive to be generally available on the PSNI intranet site are to be indexed, updated and kept.					X

		Full	Part	Outs.	Adj.	W/D
11.	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.	X				
<b>CHAPTER 4: OPERATIONS</b>						
<b>2007 Recommendations</b>						
9.	The PSNI should include reference to the rights, vulnerabilities and issues faced by children and young people in operational briefings relating to anti-social behaviour, youths causing annoyance and other operations involving children and young people.	X				
10.	The PSNI should consider adopting Coleraine DCU's policy and deployment log as its standard operational planning log.			X		
11.	The PSNI should consider amending its policy on policing unlawful public sexual activity to include specific guidance to officers on how they can ensure arrest operations are conducted sensitively and with least interference with Article 8.	X				
12.	The PSNI should take steps to establish an effective method of monitoring the use of stop and search powers across districts	X				
<b>2006 Recommendations</b>						
19.	The PSNI should examine and evaluate its use of stop and search powers to ensure that these powers are not being exercised disproportionately.	X				
<b>CHAPTER 5: ADHERENCE TO CODE OF ETHICS</b>						
<b>2007 Recommendations</b>						
13.	The PSNI should carry out further analysis of statistics on breaches of the Code of Ethics to clarify the patterns or types of behaviours in question.	X				
14.	The PSNI should ensure that all new policies, procedures and guidance include relevant reference to the Code of Ethics as a matter of standard practice henceforth.	X				
<b>2006 Recommendations</b>						
21.	The PSNI should provide further evidence of the effectiveness of the Code of Ethics that can be assessed by the Policing Board.	X				
<b>2005 Recommendations</b>						
20.	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.	X				
<b>CHAPTER 6: COMPLAINTS, DISCIPLINE AND CIVIL ACTIONS</b>						
<b>2007 Recommendations</b>						
15.	The PSNI should investigate the behaviour or conduct resulting in the high number of Superintendents' Written Warnings under Articles 1.5 and 2.2 of the Code of Ethics.	X				
16.	The PSNI and the Policing Board should investigate the possible causes of the increase in the overall number of complaints made against officers receiving three or more complaints in a twelve month period.					X

		Full	Part	Outs.	Adj.	W/D
17.	The PSNI should provide evidence of a response to the Police Ombudsman's Regulation 20 reports relating to the discharge of AEPs in North Belfast in August 2005 and the death of female A in Newry in November 2002 within three months of the publication of this report.	X				
18.	The PSNI should provide details to the Policing Board of all completed misconduct investigations returned to DCUs in 2006/2007 and what action was subsequently taken by DCUs in response.	X				
19.	The PSNI should provide additional information to the Policing Board on cases resulting in criminal convictions of officers for perverting the course of justice in 2006/2007.	X				
20.	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.	X				
<b>CHAPTER 7: PUBLIC ORDER</b>						
2007 Recommendations						
21.	In 2008 the PSNI should reinstate public order training on the Public Processions (Northern Ireland) Act 1998.	X				
<b>CHAPTER 8: USE OF FORCE</b>						
2007 Recommendations						
22.	The PSNI should consider whether it should further amend its AEP policy to include guidelines that reflect the following: "The younger the individual against whom an AEP is used, the stronger the justification for use will have to be. Moreover, below a certain age, it is difficult to envisage any circumstances when the use of AEPs will be justified".	X				
23.	The PSNI should review its AEP training course to refer expressly to the PSNI AEP policy and to incorporate explicit consideration of the rights of children and young people.	X				
24.	The PSNI should complete its pilot of the electronic Use of Force Monitoring Form expeditiously and following completion of the evaluation of the pilot move promptly to introduce the electronic form across the PSNI.	X				
25.	The PSNI should assign responsibility internally for reviewing all uses of CS spray annually, and for issuing guidelines on best practice to police officers. Further, the PSNI should provide the Policing Board with a summary of the findings and conclusions of its annual internal review.			X		
2006 Recommendations						
29.	The PSNI and the Policing Board should revisit Recommendation 41 of the 2005 Annual Report and agree how further information can be supplied to the Policing Board to allow it to monitor more effectively the use of CS spray for compliance with the Human Rights Act 1998.	X				
2005 Recommendations						
36.	The PSNI should provide statistics collated on the use of force to the Policing Board on a quarterly basis.					X
37.	The PSNI should review and revise its General Orders on public order as follows: b. Policy on the Use of Firearms: cross-refer to the Code of Ethics, particularly Article 4, and insert a review date into the policy.	X				

		Full	Part	Outs.	Adj.	W/D
38.	The PSNI should provide reports to the Policing Board on a quarterly basis of all incidents where water cannons 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.	X				
41.	The PSNI should 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.	X				
<b>CHAPTER 9: COVERT POLICING</b>						
<b>2007 Recommendations</b>						
26.	The PSNI should complete its revision of its Undercover policy and its Members of the Public policy within 12 months of the publication of this report and also should consider how best to ensure that its Members of the Public policy is better understood by all PSNI officers for whom it is relevant.	X				
27.	The PSNI should consider the scope for incorporating a number of the Surveillance Commissioner's recommendations into the policy on Covert Surveillance Authorisation and the role of CAB.	X				
28.	In future, as a matter of standard practice, all PSNI material on covert policing of a general nature (e.g. policies, guidance and general forms) should be reviewed and approved by the PSNI human rights legal adviser before it is issued.	X				
<b>2006 Recommendations</b>						
33.	The PSNI should further review the effectiveness of its policies on covert policing within 12 months of this Human Rights Annual Report.					X
<b>2005 Recommendations</b>						
46.	The PSNI should review the effectiveness of its recent policies on covert policing in 12 months from this report.					X
<b>CHAPTER 10: VICTIMS RIGHTS</b>						
<b>2007 Recommendations</b>						
29.	The PSNI should require all MLOs to review the district command and control log on a monthly basis as a matter of standard practice to identify incidents which may constitute hate incidents and crimes but which may not be recorded as such.	X				
30.	The PSNI should work with the PPS to agree standard definitions and policies and a more integrated approach to the prosecution of hate crime.	X				
31.	The PSNI should amend its policy on unauthorised encampments to emphasise that an unauthorised encampment may not be removed unless a suitable alternative site is available or Article 3 of the Unauthorised Encampment (Northern Ireland) Order 2005 applies and ensure that officers are aware of the terms of the 2005 Order and the proper scope of their powers under it.	X				

		Full	Part	Outs.	Adj.	W/D
32.	The PSNI should report to the Policing Board on a six-monthly basis setting out the number of police orders issued under the Unauthorised Encampment (Northern Ireland) Order 2005 and short summaries of the circumstances relating to each order.	X				
33.	The PSNI should ensure that the Traveller community is represented in its cultural awareness training to PSNI student officers.	X				
34.	The PSNI should consider appointing a dedicated Traveller liaison officer.	X				
35.	The PSNI internal evaluation team should evaluate the PSNI's student officer training on victims and witnesses.			X		
<b>2006 Recommendations</b>						
37.	The PSNI should consider whether it needs to develop a corporate policy on the training of officers on the treatment of victims and the training of specialist officers appointed to support particular victim groups, or to adopt particular models of good practice.	X				
<b>CHAPTER 11: TREATMENT OF SUSPECTS</b>						
<b>2007 Recommendations</b>						
36.	The PSNI should reconsider establishing a policy that all District Commanders meet their respective custody visiting teams on an annual basis to discuss concerns regarding treatment of persons in custody.					X
37.	The Policing Board, in liaison with the PSNI and the Northern Ireland Office, should reconsider the question of how these gaps in the protection of terrorist suspects detained by the PSNI can be filled.	X				
38.	Consideration should be given by the Policing Board and the PSNI to extending the role of custody visitors to apply to non-designated detention cells.	X				
39.	A member of the Policing Board's Service Monitoring branch should represent the Policing Board on the PSNI's custody working group.	X				
<b>2006 Recommendations</b>						
40.	The PSNI should remind its custody officers, in particular custody sergeants, of the role and responsibilities of the custody visiting teams, and the need to facilitate custody visits as a matter of standard practice.	X				
<b>CHAPTER 12: HUMAN RIGHTS AWARENESS IN THE PSNI</b>						
<b>2005 Recommendations</b>						
55	e. The results of Questions 11-14 should be analysed by Training, Education and Development and factored in to its design and development of training programmes and materials in the future.	X				
<b>CHAPTER 13: POLICING WITH THE COMMUNITY</b>						
<b>2007 Recommendations</b>						
40.	The PSNI should consider extending the Knowledge Sharing Project model to a variety of partnership agencies.	X				

		Full	Part	Outs.	Adj.	W/D
<b>CHAPTER 14: PRIVACY AND DATA PROTECTION</b>						
2007 Recommendations						
41.	The PSNI should identify those members of staff most likely to encounter data protection issues and make training compulsory for them.					X
42.	The PSNI should implement a timeline for introducing a disclosure log in the public interest section of its publication scheme.	X				
43.	The PSNI should indicate within three months of this report which of the ACPO recommendations made following ACPO's review of PSNI Freedom of Information and Data Protection functions it accepts and how it intends to implement them.	X				
<b>CHAPTER 15: CHILDREN AND YOUNG PEOPLE</b>						
2007 Recommendations						
44.	The PSNI should report by January 2008 on its progress in establishing the Public Protection Units within each of its eight DCUs.	X				
TOTALS		56	0	3	0	11

**Key to status of recommendations**

Full	-	Recommendation implemented in full
Part	-	Recommendation implemented in part
Outs.	-	Recommendation outstanding
Adj.	-	Recommendation adjusted
W/D	-	Recommendation withdrawn



# Appendix 3: SUMMARY OF RECOMMENDATIONS 2005 - 2007

<b>HUMAN RIGHTS ANNUAL REPORT RECOMMENDATIONS 2005 - 2007</b>				
<b>Summary of Overall Status of Implementation of Recommendations</b>				
	Implemented in full	Withdrawn	Outstanding	Totals
<b>2007 Recommendations</b>	37	4	3	44
<b>2006 Recommendations</b>	42	3	0	45
<b>2005 Recommendations</b>	56	4	0	60
<b>Totals</b>	<b>135</b>	<b>11</b>	<b>3</b>	<b>149</b>







**Jane Gordon BA (Oxon), LLM** completed her BA (Hons) in Jurisprudence at Wadham College, Oxford in 1993. She qualified and worked as a litigation lawyer with Lovells until 1999. Following qualification, she spent time in Kingston, Jamaica working on death row cases. In 2000, Miss Gordon obtained Distinction in the LLM at King's College, London where she specialised in international and domestic human rights law. Since then, she has worked in equality and human rights practice and policy. In 2000, she assisted Professor Christine Chinkin in a People's Tribunal against Japanese Military Sexual Slavery during World War II held in Tokyo. She worked as judicial assistant to the Lord Chief Justice in the year following the introduction of the Human Rights Act 1998.

Miss Gordon was called to the Bar in November 2001. She has worked as senior parliamentary legal advisor to Lord Lester at the Odysseus Trust, when she was appointed ad hoc Specialist Advisor to the Joint Committee on Human Rights and has also worked in the NGO sector as Deputy Director of the Kurdish Human Rights Project, where she worked extensively on human rights cases before the European Court of Human Rights.

In 2003, Miss Gordon was appointed Legal Specialist to the Home Affairs Committee at Westminster, leading their inquiry on the Rehabilitation of Prisoners. In the same year, Ms Gordon was appointed as Human Rights Advisor to the Northern Ireland Policing Board and, together with Keir Starmer QC, has devised the framework for monitoring the compliance of the Police Service of Northern Ireland with the Human Rights Act 1998. Miss Gordon is a Visiting Fellow at the London School of Economics and Senior Lecturer in Human Rights at Kingston University. Miss Gordon was appointed special adviser to the Northern Ireland Affairs Committee in its recent inquiry into the costs of policing the past.

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INVESTOR IN PEOPLE

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