

BULLETIN: January 2006

Analysis of CS Spray use during 2004

Foreword by the Police Ombudsman for Northern Ireland



The introduction of CS Spray for police in Northern Ireland was one of a series of important developments in policing during the past year. Following the articulation of some public concerns about the use of this new method of incapacitating people, I agreed with the Chief Constable that we would investigate every use of CS Spray in the period from 6 August to 31 December 2004. This would ensure that any matters arising from the use of the CS Spray would be dealt with.

With my Senior Management Team I also decided that we would conduct research into the use of the CS Spray over that period to identify any trends and patterns which might emerge. The investigations proved to be useful very rapidly, and on 28 October 2004 we wrote to the Deputy Chief Constable alerting him to concerns which we had, and making some urgent recommendations. These were immediately acted upon by the police and an instruction was issued to police giving effect to those recommendations.

This short report contains analysis of the early days of the use of CS Spray in Northern Ireland and it is my hope that it will inform the understanding of, and debate about this issue.

A decorative graphic element consisting of a series of small, light-colored dots arranged in a pattern that resembles a stylized signature or a decorative flourish.

Nuala O'Loan

Police Ombudsman for Northern Ireland

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'Occurrence Report:CS Spray'

Introduction

CS Incapacitant Spray (CS Spray) was introduced in Northern Ireland on the 1 July 2004. The first CS Spray incident that the Police Ombudsman received a complaint about occurred on the 11 July 2004. As from the 6 August 2004, the Police Ombudsman entered into an agreement with the Chief Constable that all usages of CS Spray from that date on would be referred, under Section 55 (4) of the Police (NI) Act 1998, to the Office of the Police Ombudsman. This agreement was at the Chief Constable's request in order that the PSNI could see any trends or patterns that were emerging and learn any lessons quickly, and was kept in place until the 31 December 2004, after which instances of CS Spray use were no longer automatically referred to the Police Ombudsman. This report provides an analysis of all complaints and Chief Constable referrals received arising from the use of CS Spray during 2004.

Methodology

Using the Police Ombudsman's Case Management System, it was possible to identify all complaints and Chief Constable Referrals associated with CS Spray incidents, from the introduction of CS Spray until 31 December 2004. Once the cases had been identified a basic summary of the case was recorded. These summaries included a brief description of the incident, the time and location of the incident, the circumstances in which the incident occurred, the outcomes of the incident and details on the targeted person(s).

Once these summaries were recorded, the details were analysed using SPSS. Frequency tables were run, along with cross-tabs and basic tables. These tables combined to produce the results that are produced within this report and the tables are reproduced in the appendix to this report.

Executive Summary

This report provides an analysis of all complaints and Chief Constable Referrals received arising from the use of CS Spray in 2004. It presents the following findings:

- the Police Ombudsman recorded 60 CS Spray incidents between 1 July 2004 and 31 December 2004. Fifty-four of these incidents took place between 6 August 2004 and 31 December 2004, when the Chief Constable automatically referred all CS Spray incidents;
- the 60 incidents included 59 non-complaint Chief Constable Referrals and 31 complaints from members of the public;
- Coleraine District Command Unit recorded the highest number of CS Spray incidents between July and December 2004;
- thirty-eight incidents took place in the street or road;
- in four incidents CS Spray was discharged in an enclosed area;
- the majority of incidents occurred at the weekend, with 35 incidents taking place on Saturday or Sunday;
- more than two-thirds of all incidents took place between midnight and 6.00 am;
- thirty-two of the incidents arose in response to public disorder situations;
- in just under three-quarters of the incidents, self-defence was at least one of the reasons given for CS Spray use;
- a warning was issued prior to CS Spray discharge in 80 per cent of all incidents;
- CS Spray was used against a restrained subject on two occasions;
- males formed the majority of complaints made by the public, and the most common age group of complainants was the 25 – 34 age group;
- an arrest was effected following CS Spray use in 44 incidents. In ten incidents no arrest was effected. The remaining six incidents were a combination of complaints about police policy in using CS Spray or incidents where CS Spray was drawn but not used;
- one-fifth of all incidents resulted in at least one police officer being affected by the CS Spray discharge;
- members of the public were reported to have been affected by the cross-contamination of CS Spray in 12 incidents;
- allegations of oppressive behaviour between July – December 2004 increased by seven per cent from the same period a year previous; and
- the number of allegations involving the use of batons between July – December 2004 decreased by 28 per cent from the same period in the previous year.

Guidelines and Training

The Criminal Law Act (Northern Ireland) 1967 provides the legal authority for the use of physical force by the police and the benchmark by which it is judged. It states that:

'A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting the lawful arrest of an offender or suspected offender or of persons at large.'

The Royal Ulster Constabulary Force Order 34/2001: Human Rights and Police Use of Force, complies with the principles of the Human Rights Act 1998. It states that:

'It is our aim to uphold and protect the human rights of all the people of Northern Ireland by providing a high quality, effective policing service in partnership with the community and in co-operation with other agencies. In carrying out our duties, Police Officers shall, as far as possible, apply non-violent means before resorting to the use of force... Whenever officers resort to the lawful use of force they shall:

(a) Minimise any interference with human rights;'

The actions of Police Officers in the use of physical force must appear on the available evidence to satisfy these criteria.

The guidelines on the use of CS Incapacitant spray can be found in PSNI General Order 28/2004. The use of force by the PSNI is regulated by their Code of Ethics. Article 4 of the Code states the standard of conduct and practice required of police officers when using force. The key standards relating to CS Spray are as follows:

'Police Officers, in carrying out their duties, shall as far as possible, apply non-violent methods before resorting to the use of force or firearms. They may use force or firearms only if other means remain ineffective or without any realistic promise of achieving the intended result (Article 4.1)

Police Officers responsible for the planning and control of operations where the use of force is a possibility, shall so plan and control them to minimise, to the greatest extent possible, recourse to force and in particular potentially lethal force (Article 4.2)

Whenever Police Officers resort to the lawful use of force or firearms they shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved;*
- (b) Minimise damage and injury, and respect and preserve human life;*
- (c) Ensure that assistance and medical aid, where possible, are secured to any injured person at the earliest possible opportunity;*
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest opportunity;*
- (e) Where force or firearms are used, report the incident promptly to their supervisors;*
- (f) Comply with any instructions issued by the Chief Constable (Article 4.3)'*

In addition to these standards set out in the Code of Ethics, the use of CS Spray may be appropriate against:

- (a) 'Those offering a level of violence which cannot be appropriately dealt with by lower levels of force*
- (b) Violent offenders, other than those armed with firearms or similar remote injury weapons, where failure to induce 'immediate' incapacitation would increase risks to all present.'*

The General Order enforces the ideals that CS Spray is not a replacement for other force options; rather it increases an officer's options in carrying out his/her duties. A warning should be issued prior to deployment, unless to do so would compromise the safety of any person, or a warning would be clearly inappropriate or pointless in the circumstances of the incident. The spray should not be used:

- (a) 'At a distance of less than one metre, or*
- (b) In an enclosed area (e.g. a car), or*
- (c) On a subject who is restrained or handcuffed.*

Unless the nature of the risk to the officer is such that this cannot be avoided. In all such cases, officers must be prepared to justify not only their use of the spray, but also their decision to use it in these circumstances.'

The General Order explains the effects of CS Spray on individuals, and also describes those persons on whom it may not prove effective. It goes on to explain aftercare procedures that should be provided by Police Officers, and informs officers of the operational procedures they must follow after using CS Spray. The officer using CS Spray must complete Form CS1, 'Occurrence Report: CS Spray'. This form should be completed by each officer who uses his or her CS Spray in a single incident. A copy of this form can be found in the appendix to this report. It also sets out the guidelines for possession of CS Spray and the storage procedures, which must be adhered to.

CS Spray is issued to all officers who have been trained in the Personal Safety Programme (formerly Conflict Resolution Skills) and is worn as part of an officer's normal patrol equipment. Training in the use of CS Spray commenced in June 2004, taking place over a three-year period. It is intended that all operational officers up to the rank of Inspector will be trained during this period. More senior ranks can be trained in the use of CS Spray on request or where there is an operational requirement. Officers will receive annual refresher training in the use of CS Spray when they attend Personal Safety Programme refresher training.

The first officers to be trained in the use of CS Spray were officers in Tactical Support Group units. Following this officers were trained at their Assistant Chief Constable's discretion. At 31 December 2004 2,151 officers had received CS Spray training. Of these, more than three-quarters (77 per cent) were from the Rural ACC team with only 500 officers from the Urban ACC team being trained at this time.

Case Studies

Case Study 1:

An officer saw a male being attacked by two men in the early hours and went to the man's assistance. Another officer assisted him. One of the two assailants was seen to drop a hammer behind a wall and he was arrested. The second officer then arrested his accomplice, who produced a claw hammer from his pocket, with which he struck the officer on the side of the head. The officer wrestled with him and both fell to the ground. The suspect still had the hammer and was free to use it. The officer's colleague came to his assistance and discharged his CS Spray after a warning was issued. This immediately incapacitated the suspect. The Police Ombudsman's investigation concluded that the use of CS Spray in these circumstances was justified and appropriate.

Case Study 2:

A public order unit came upon a group of males involved in a fight. One male was lying on the ground and was being repeatedly attacked by a number of males. Police Officers tried to split them apart without success. Then one officer drew their CS Spray and warned that it would be used if the youths did not stop fighting. When this warning did not deter the crowd, the officer discharged the CS Spray at the group. Slowly the effects took hold and the males ceased fighting. The Police Ombudsman's investigation concluded that the officer's use of CS Spray was a justified and proportionate use of force, given the circumstances. However the Police Ombudsman expressed her concerns regarding the suitability of CS Spray in situations of public order and unanticipated street disorder because of the risks associated with such use.

Case Study 3:

Police attended a major disturbance at a domestic residence, where 34 people had attacked a particular house and threatened to enter the property and kill the occupants. Upon arrival, police arrested a number of offenders. During the arrest of one offender a man tried to prevent the Police Officer from affecting the arrest. He was warned by another officer to stop or else he would use CS Spray. The man ignored the officer's command and continued towards the arresting officer. Fearing for his colleague's safety, the officer discharged one burst of CS Spray at the man, who immediately stopped, before running into a nearby house to wash-out his eyes. The Police Ombudsman's investigation concluded that the use of force was proportionate, within legislation and guidelines.

Case Study 4:

Two Police Officers attempted to stop two males who had attempted to steal a car. A foot pursuit ensued during which one of the males escaped. The other was eventually caught by one of the officers and a struggle ensued. The other officer saw the struggle and ran to assist their colleague. Fearing for their safety and the safety of the public, the officer discharged CS Spray into the chest and face of the male suspect, immediately incapacitating him. The male was subsequently arrested. The Police Ombudsman's investigation found that the use of CS Spray in this instance was justified and appropriate. However the officer who discharged the CS Spray was reminded of their obligation to give a warning in such circumstances.

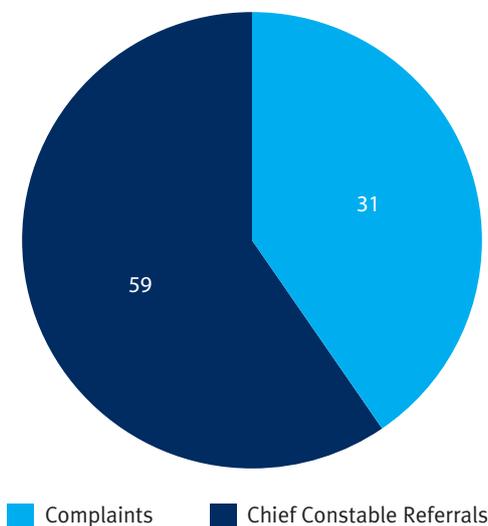
Analysis

Chief Constable Referrals / Complaints

During the period 1 July – 31 December 2004, there were a total of 60 CS Spray incidents reported to the Police Ombudsman’s Office. From 6 August until 31 December the Chief Constable automatically referred all CS Spray incidents. Fifty-four of the incidents occurred during this period, with the other six incidents occurring between 1 July and 5 August.

These 60 incidents resulted in 90 Chief Constable Referrals and Complaints (Figure 1). In total there were 59 Chief Constable Referrals, 4 of which related to incidents where an officer’s CS Spray canister was drawn but was not used, and 31 complaints from the public arising from the 60 CS Spray incidents. All but one of the Chief Constable Referrals were automatically referred following the agreement reached with the Police Ombudsman under Section 55 (4) of the Police (NI) Act 1998. At the time of writing, there have been no Chief Constable Referrals in relation to a CS Spray incident following the dissolution of this agreement on 31 December 2004.

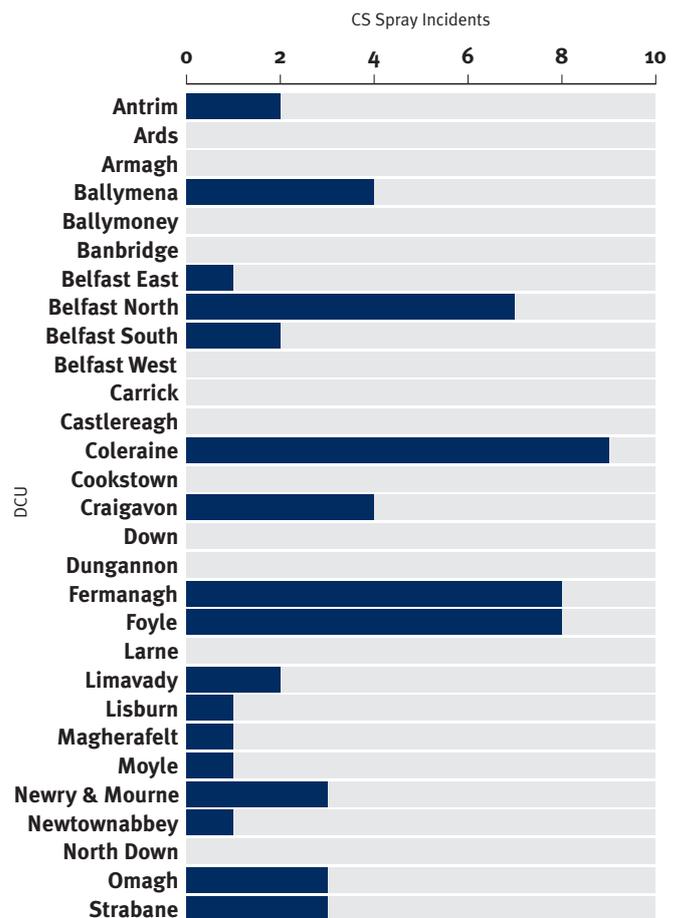
Figure 1: Number of complaints / Chief Constable Referral in CS Spray incidents (1/7/04-31/12/04)



Location and timing of incidents

The District Command Unit that recorded the highest number of CS Spray incidents from the introduction of CS Spray until 31 December 2004 was Coleraine DCU, with nine incidents (Figure 2). The next highest incidence was in Fermanagh and Foyle with eight incidents each. The Greater Belfast area recorded ten CS Spray incidents in this period, with the majority of those incidents taking place in Belfast North DCU (7 incidents). The training of officers in CS Spray may have some influence on these figures. It is clear from the figures provided by PSNI Operational Support Department that the Rural ACC team was much faster at rolling out the training to their officers, meaning that Rural officers were more likely to be able to use CS Spray than their Urban counterparts, hence the highest incidence rates occurring in Rural DCUs.

Figure 2: DCU of CS Spray Incidents (1/7/04-31/12/04)



Analysis

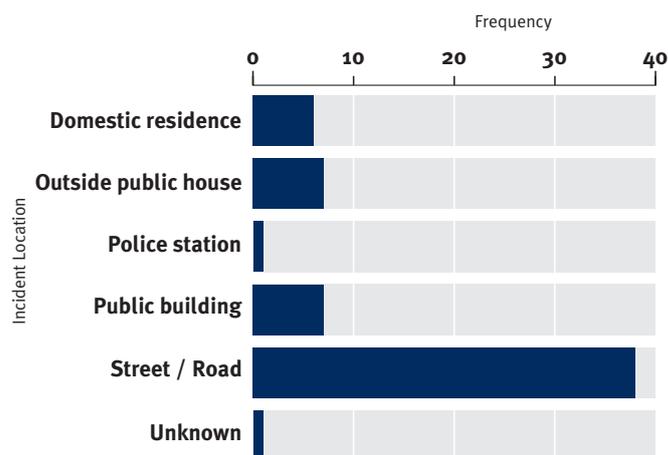
Enniskillen and Coleraine police stations had the highest incidence of CS Spray use up until 31 December 2004, each station having eight CS Spray incidents (Table 1). Strand Road station in Foyle DCU recorded the next highest incidence, with five separate incidents.

Table 1: Nearest police station to CS Spray incident (1/7/04-31/12/04)

	Frequency
Antrim	1
Antrim Road	3
Ardmore (Newry)	2
Ballycastle	1
Ballymena	4
Bessbrook	1
Coleraine	8
Crumlin	1
Donegall Pass	1
Enniskillen	8
Glengormley	1
Limavady	2
Lisburn	1
Lisburn Road	1
Lurgan	2
Maghera	1
Newtownstewart	1
North Queen St	2
Omagh	3
Portadown	2
Portrush	1
Strabane	2
Strand Road	5
Strandtown	1
Tennent St	2
Waterside	3
Total	60

The most frequent location of the CS Spray incidents recorded between 1 July and 31 December was in the street or road, (38 incidents, Figure 3). The next most frequently occurring locations were outside a public house, or at a public building (7 incidents each).

Figure 3: Location of CS Spray incidents (1/7/04-31/12/04)



In discharging CS Spray, Police Officers are subject to the PSNI CS Incapacitant Spray Policy as per General Order No: 28/2004. This order states:

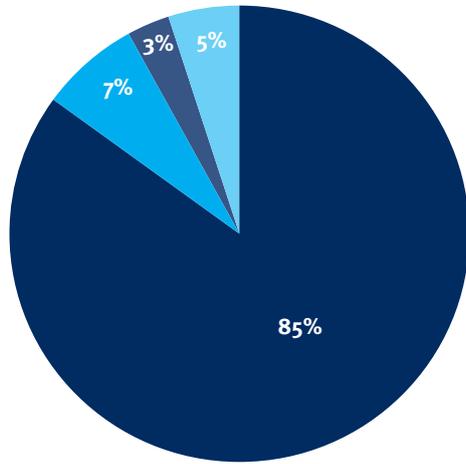
*‘The spray should **not** be used:*

(b) In an enclosed area (e.g. a car)

***Unless** the nature of the risk to the officer is such that this cannot be avoided. In all such cases, officers must be prepared to justify not only their use of the spray, but also their decision to use it in these circumstances.’*

In 4 of the 60 incidents, CS Spray was discharged in an enclosed area (Figure 4). The vast majority of incidents occurred in open areas (51 incidents). The discharges in enclosed areas included two discharges in response to domestic disturbances, one discharge in the course of a property search, and one discharge in a custody suite. In a report published by The Police Complaints Authority in March 2000 (‘CS Spray: Increasing Public Safety?’) almost 40 per cent of complaints regarding CS Spray use related to incidents that occurred in an enclosed space.

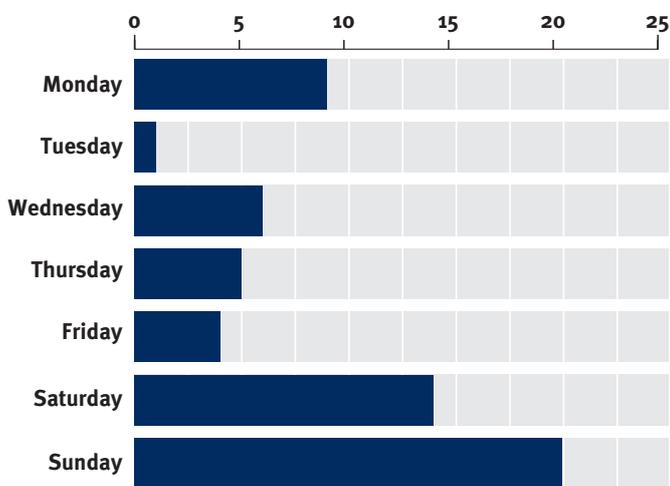
Figure 4: Where was CS Spray discharged? (1/7/04-31/12/04)



Open Space Enclosed Space Unknown N/A

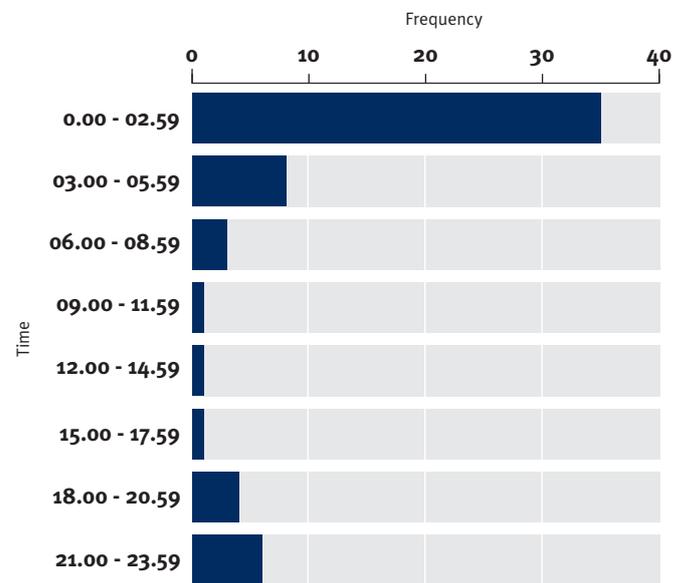
The majority of incidents took place at the weekend, with 35 of the 60 incidents taking place on Saturday or Sunday (see Figure 5).

Figure 5: Day of CS Spray incident (1/7/04-31/12/04)



More than two-thirds of all CS Spray incidents took place between midnight and 6.00am: Twenty incidents (33 per cent) took place between midnight and 3:00am on Saturdays and Sundays, with a further 15 incidents occurring during the same times in the rest of the week (Figure 6). A further eight incidents occurred between the hours of 3:00am and 6:00am, with six incidents occurring between 6.00am and 6.00pm, and ten incidents taking place between 6.00pm and midnight.

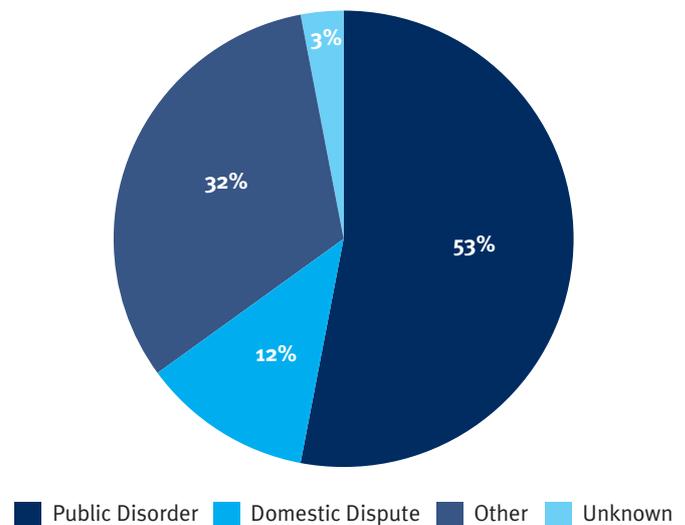
Figure 6: Time of CS Spray incidents (1/7/04-31/12/04)



Incident Circumstances

More than half of the incidents (32) recorded between July and December 2004 related to a police response to public disorder situations, i.e. a riot or ad-hoc street disorder incident (Figure 7). Seven of the incidents (12 per cent) related to domestic disputes, while 19 incident circumstances were classified as other, this included; affecting an arrest, search of premises, and following a road traffic accident.

Figure 7: Circumstances Leading to CS Spray Incident (1/7/04-31/12/04)



Public Disorder Domestic Dispute Other Unknown

Analysis

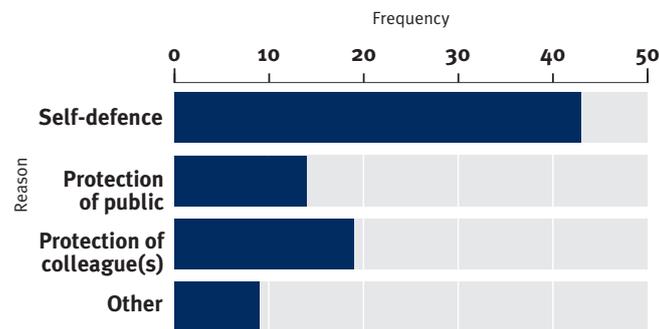
On 28 October 2004, the Police Ombudsman’s Executive Director of Investigations wrote to the Deputy Chief Constable of the PSNI outlining issues that had arisen in CS Spray incidents up until that point.

One of the issues outlined in this correspondence was the use of CS Spray in public order events and ad hoc street disorder events. The difficulty with the use of CS Spray as a ‘dispersal’ weapon in these circumstances is that it is indiscriminate and the likelihood of an adverse impact on innocent bystanders is increased. Contamination of fellow officers and the officer operating the spray is also much more likely. In addition, the use of CS Spray in such circumstances may lead to an impact on community confidence in the police.

Of the 32 public disorder incidents, exactly half of them occurred prior to the 28 October 2004, with the other half occurring after this date.

In just under three-quarters (72 per cent) of the incidents, self-defence was at least one of the reasons stated on the CS1 form for the use of CS Spray (Figure 8). Protection of a colleague(s) was a reason given for CS Spray use in 19 incidents (32 per cent), and protection of the public was quoted as at least one of the reasons on 15 occasions (25 per cent). In the study conducted by The Police Complaints Authority, CS Spray was used primarily in self-defence in 61 per cent of incidents.

Figure 8: Reasons given by Police Officer for using CS Spray (1/7/04-31/12/04)



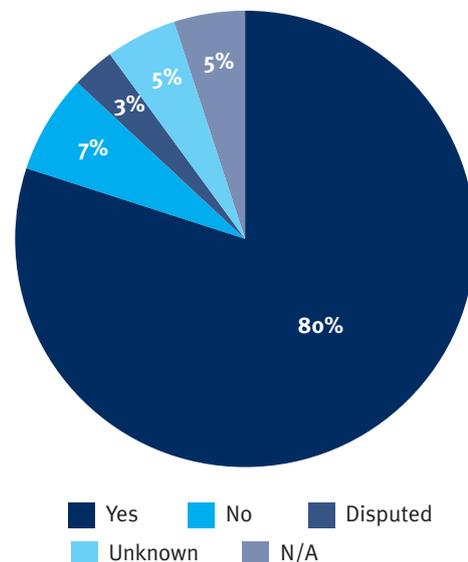
Adherence to CS Spray guidelines

When police officers use CS Spray they are subject to the PSNI CS Incapacitant Spray Policy General Order No: 28/2004. According to this order:

‘Police Officers shall identify themselves as such, and shall give a clear warning of their intent to use CS, unless to do so would compromise the safety of any person, or a warning would be clearly inappropriate or pointless in the circumstances of the incident. The wording for such a warning should be – “I am a Police Officer. If you do not comply with my instructions I will use CS Spray.”’

In the vast majority of incidents (80 per cent) a warning was issued prior to CS Spray being discharged (Figure 9). In four incidents it is stated on the CS1 form that no warning was given, and the issue of a warning is disputed in a further two incidents. In the incidents where no warning was issued, the evidence would suggest that a warning would have been deemed pointless in the circumstances of the incident, or that there simply wasn’t the opportunity to issue a warning.

Figure 9: Was a Warning Issued Prior to CS Spray Discharge? (1/7/04-31/12/04)



General Order 28/2004 also states:

The liquid stream is directional and has a range of up to four metres. Optimum accuracy however, will be achieved over a distance of 1.25 to 2 metres. The operating distance is the distance between the canister and the subject's eyes, not the distance between the officer and the subject. The spray should not be used:

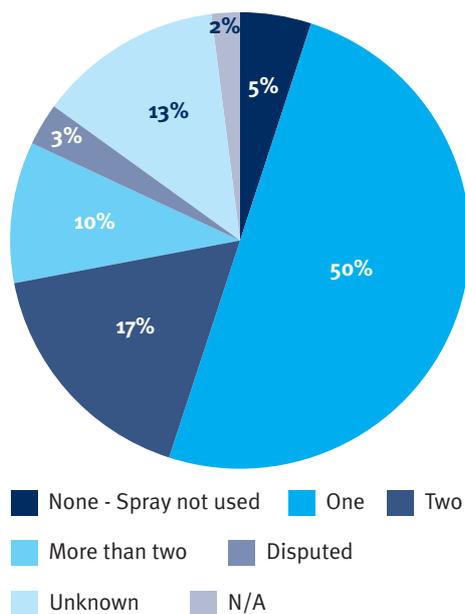
(a) At a distance of less than one metre

Unless the nature of the risk to the officer is such that this cannot be avoided. In all such cases, officers must be prepared to justify not only their use of the spray, but also their decision to use it in these circumstances.

In more than half (58 per cent) of the incidents recorded it is unclear, from the CS1 forms or any subsequent documentation recorded on Office of Police Ombudsman for Northern Ireland's Case Management System, how far away the officer was from their target when discharging his/her CS Spray. Of those incidents where a distance has been recorded (either on the CS1 form or in police/witness statements) only one is recorded as being at less than one metre (20 – 30 centimetres away).

In exactly half of the incidents recorded there was only one discharge of CS Spray (Figure 10). In three of the incidents there was no CS Spray discharge, the CS Spray canister being drawn by the police officer but not used.

Figure 10: Number of CS Spray Discharges (1/7/04-31/12/04)



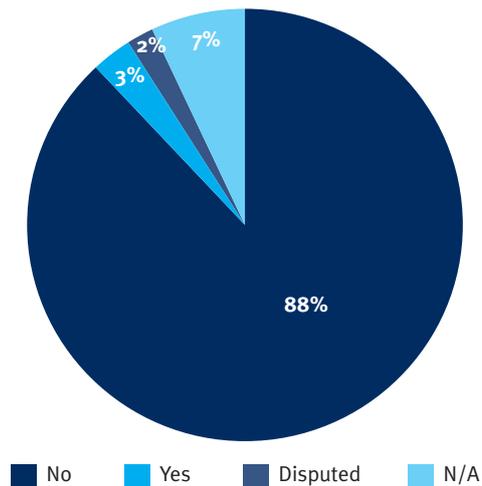
In further guidance provided by General Order 28/2004, it is stated that:

*'The spray should **not** be used:*

*(c) On a subject who is restrained or handcuffed, **Unless** the nature of the risk to the officer is such that this cannot be avoided. In all such cases, officers must be prepared to justify not only their use of the spray, but also their decision to use it in these circumstances.'*

In 52 of the incidents recorded between 1 July – 31 December 2004 (88 per cent) there was no evidence of CS Spray being discharged against a subject who had already been handcuffed. CS Spray was discharged against a restrained subject in 2 of the 60 incidents recorded.

Figure 11: Evidence of CS Spray Use After Restraint (1/7/04-31/12/04)



In one of these incidents it is clear from CCTV footage that the subject was on the ground and being restrained by three police officers. Although the officer who discharged the CS Spray in this incident argued that he still perceived the subject to be a threat, the available CCTV footage would undermine this argument and indicate that the threat posed was minimal and the use of CS Spray could have been avoided.

In the other incident, the subject was sprayed four times, twice before he was restrained and twice after restraint. The subject was initially resisting arrest and was sprayed twice. The detained person continued resisting arrest, kicking out and spitting at police officers and for this reason was sprayed on a further two occasions, the last of which occurred when the detained person had been placed in a cellular police van.

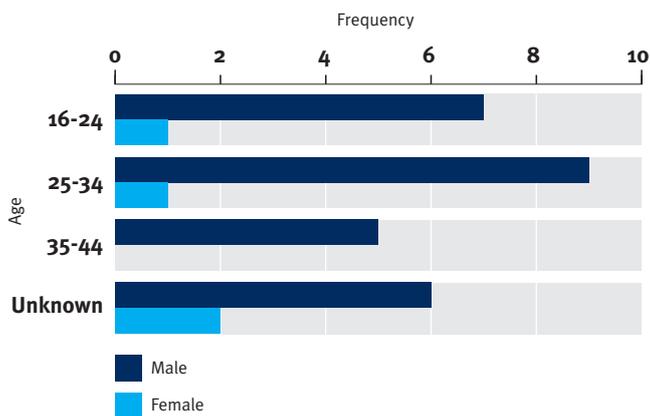
Analysis

CS Spray subjects

In more than two-thirds of the incidents of CS Spray use recorded (42 incidents), there was only one person targeted. In six incidents there were two targets identified, and in eight incidents there were more than two targets.

Of the 31 complaints made by members of the public, 27 were made by males, and 4 by females. Ten complainants gave their age as 25 – 34, 8 were aged 16 – 24, and 5 were aged 35 – 44. The remainder of complainants did not provide details of their age. Seventy-three per cent of complainants in the Police Complaints Authority report were male, and the majority age group of complainants was the 25 – 44 age group (constituting 70 per cent of all the complainants).

Figure 12: Age and Gender Profile of CS Spray Complainants (1/7/04-31/12/04)



Consequences and outcomes of CS Spray discharge

In forty-four incidents (73 per cent) at least one arrest was affected following the use of CS Spray. In ten incidents (17 per cent) no arrest was affected. In the majority of the cases where no arrest was made following the discharge of CS Spray it was because it related to a public order incident, and police were either outnumbered or the crowd dispersed after CS Spray discharge.

In one case CS Spray was used to calm down a man who was being abusive to staff and customers at a garage. The man then approached police in an aggressive manner, and was sprayed after refusing to listen to police warnings. The man immediately stopped and calmed down. He was then allowed to proceed and police followed behind him at a discreet distance.

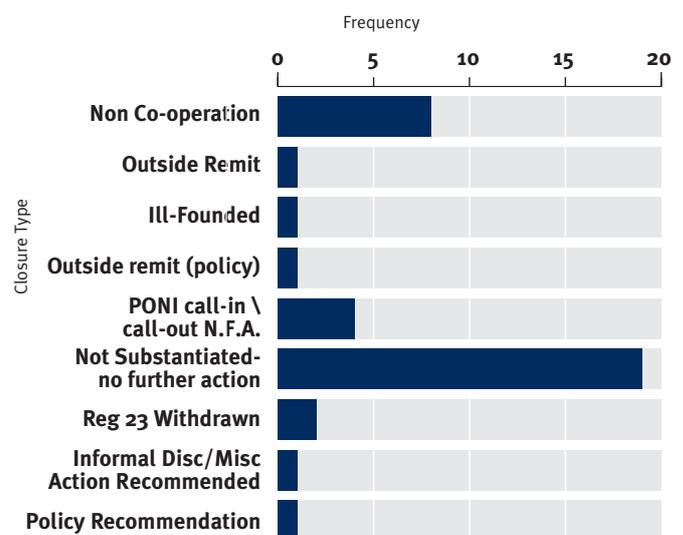
As mentioned previously, a danger with CS Spray is the possibility of cross-contamination, of either innocent

bystanders or fellow police officers. This is one of the main reasons why its use is to be carefully considered when responding to large public order incidents, or if being used for crowd dispersal purposes. From the 60 incidents recorded, 12 (20 per cent) resulted in at least one Police Officer being affected by the CS Spray discharge. This gives cause for concern. The instinctive reaction of anyone sprayed with CS Spray is to put their hands to their face. If an officer does this they are less able to defend themselves or others and thus an already dangerous situation becomes even more so. Officers are particularly vulnerable when contaminated as they are carrying their personal protection weapon – if their eyes are streaming from the effects of CS Spray, their gun can be taken.

Furthermore, additional members of the public, be they innocent bystanders or otherwise, were reported to have been affected by the discharge of CS Spray in 12 (20 per cent) of the incidents recorded (not necessarily the same 12 incidents as those in which Police Officers were affected). The contamination of innocent bystanders and members of the public may impact upon community confidence in the police use of CS Spray.

By 31 August 2005, 52 of the 90 complaints/Chief Constable referrals received between 1 July 2004 and 31 December 2004 were still being investigated. Of the 38 cases that have been closed, half had been closed as “Not Substantiated – No further action”, and 8 had been closed as “Non Co-Operation”. The remainder were closed under a variety of headings, the full details of which are included in Figure 13 below.

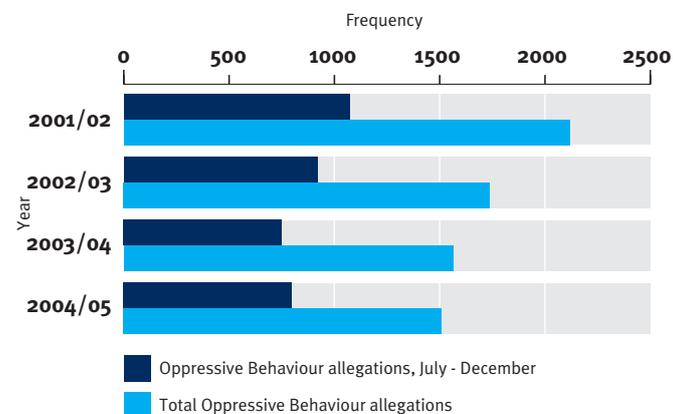
Figure 13: Closure status of CS Spray investigations (1/7/04-31/12/04)



The Police Ombudsman’s investigation into one CS Spray discharge resulted in an officer receiving advice and guidance on the correct after-care procedures to be employed after using CS Spray. Arising from a second Police Ombudsman investigation a recommendation was made that, prior to being issued with CS Spray, the officer concerned should be re-trained in its usage and should receive advice and guidance regarding the discharge of CS Spray. Fifteen of the 90 complaints/Chief Constable Referrals have been sent to the Director of Public Prosecutions. Fourteen of these recommended that no further action be taken, while one recommended prosecution for unlawfully administering a noxious substance.

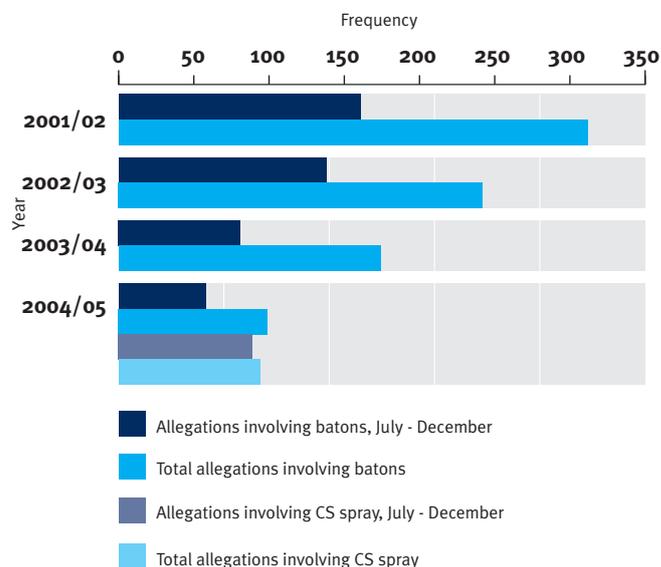
The first six months following the introduction of CS Spray on 1 July 2004 coincided with an increase in the number of allegations of oppressive behaviour. The number of allegations of oppressive behaviour recorded between July – December 2004 was 799, an increase on the same period a year previous of 7 per cent. This reversed a trend of decreasing allegations of oppressive behaviour (during that time period) since 2001. This can be seen in Figure 14.

Figure 14: Allegations of Oppressive Behaviour, 2001/02-2004/05



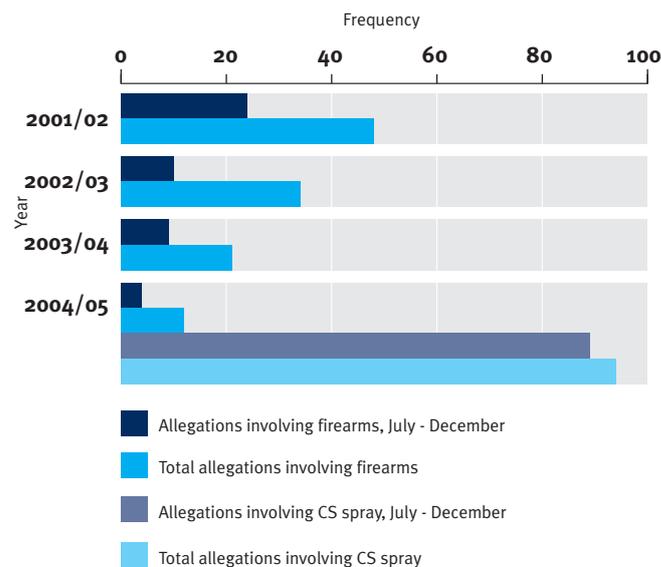
The number of allegations involving the use of batons had been decreasing annually and this continued following the introduction of CS Spray. Allegations involving the use of batons fell by 28 per cent during July – December 2004, when compared to the same period the previous year. However, this decrease was less marked than the drop experienced between July – December 2002 and July – December 2003 (a 41 per cent decrease).

Figure 15: Allegations involving the use of batons or CS Spray, 2001/02-2004/05



Allegations involving firearms or the discharge of firearms have followed a similar pattern to those of baton use. They have been decreasing annually, and this pattern continued following the introduction of CS Spray in July 2004.

Figure 16: Allegations involving the use of firearms or CS Spray, 2001/02-2004/05



Recommendations

When a Section 55 Referral investigation is completed, a report is forwarded under Regulation 20 Royal Ulster Constabulary (Complaints etc.) Regulations 2000 to the Northern Ireland Policing Board, the Chief Constable and the Secretary of State. Each Regulation 20 report will contain an introduction, some background to the referral, the circumstances under which the incident occurred, a summary of the Police Ombudsman's investigation, a review of the legislation and training involved and whether it was adhered to, a conclusion and finally any recommendations which have been made as a result of the Police Ombudsman's investigation. Below is a summary of the recommendations to date from published Regulation 20 reports regarding CS Spray use:

- CS Spray should not be used at a distance of less than one metre or on subject who is restrained or handcuffed, unless the nature of the risk to the officer is such that this cannot be avoided. These issues should be reinforced to all Police Officers equipped with CS Spray canisters;
- all custody officers should be reminded of the need for enhanced cell supervision when dealing with prisoners who have been exposed to CS Spray. This particularly relates to prisoners who also show signs of intoxication. Such cell checks must also be clearly documented in the relevant custody record to ensure the accountability and transparency of the custodial process;
- senior operational Police Officers should be reminded of the agreed call-out procedure between the Police Service of Northern Ireland and the Office of the Police Ombudsman for Northern Ireland when faced with appropriate scenarios. This ensures that any potential loss of evidence can be minimised and assists in accommodating an effective and efficient investigation that will secure both police and public confidence. Failure to adhere to the call-out procedure leaves both organisations open to criticism; and
- all custody officers should be reminded of the need to issue Form CS3 to all prisoners who have been exposed to CS Spray prior to their release from custody. This is an important duty of care issue and the Police Service of Northern Ireland would be vulnerable to criticism if a member of the public were released from police custody and suffered an extreme delayed reaction to the effects of CS Spray having not been handed said information sheet.

These recommendations are in addition to the concerns of the Police Ombudsman regarding the suitability of CS Spray in situations of public order and unanticipated street disorder. These concerns were raised on 28 October 2004 and were as follows:

- the guidance and training articulates caution in the use of CS Spray at public order events but does not address the more ad hoc street disorder which can amount to similar situations to these encountered at pre-planned events. The use of spray in the street disorder situation, as a 'dispersal' weapon, is likely to have an impact on community confidence in the police. This may be an issue that needs emphasising in training and / or through instructions. **The Police Ombudsman would recommend that this area of use is reviewed as a matter of urgency;**
- complaints had been received regarding CS Spray being used on restrained prisoners. PSNI instructions, in fairness, are quite clear on this. **The Police Ombudsman would, however, recommend that this be re-emphasised;** and
- the CS Spray forms require modification. The report forms would benefit from a question on whether or not a targeted individual was being restrained, and if so allow for a justification to be recorded. The form would also benefit from Section 10 including a note to the effect '*...continue on separate page if necessary*'. This will ensure that officers do not feel constrained by the space available.

Conclusions

There is little doubt that the introduction of CS Spray as part of a Police Officer's armoury has been of benefit in situations that perhaps in the past would have required the officer to draw a firearm or a baton. Obviously usage of CS Spray is not applicable in all situations but, as has been evidenced in this report, the number of allegations involving baton or firearm use has decreased since its introduction. As against this the number of oppressive behaviour allegations increased during the first six months after CS Spray introduction, reversing the trend of previous years.

From our analysis it can be seen that CS Spray has been primarily used at the weekend in response to public disorder/street disorder incidents. Sixty-two per cent of incidents occurred in the street or road, more than half of all incidents occurred at the weekend and 32 of the incidents were in response to public disorder situations. The majority of complainants were males in the 16 – 34 age group.

The use of CS Spray in public disorder situations needs to be monitored. Using CS Spray as a crowd dispersal tool is inappropriate due to the high possibility of cross-contamination, both of members of the public and Police Officers. However, should a Police Officer in a public disorder situation find himself confronted with a violent person the use of spray may be justified where the officer can demonstrate that its use is proportionate to the seriousness of the incident and the legitimate objective to be achieved.

Clearly the use of CS Spray is not, and should not, be a replacement for other use of force options, but rather it should provide an alternative to existing means of control, giving an officer increased options in carrying out his/her duties.

Despite its relatively recent introduction in Northern Ireland the findings of this report indicate that, with a few exceptions, the use of CS Spray has been justified and proportionate given the circumstances prevailing at the time.

Appendix

1: Supplementary Statistical Tables

Table 1: Number of complaints / Chief Constable Referral incidents (1/7/04-31/12/04)

	Frequency	%
Complaints	31	34.4 %
Chief Constable Referrals	59	65.6 %
Total	90	100.0 %

Table 2: DCU of CS Spray incidents (1/7/04-31/12/04)

	Frequency	% of incidents
Antrim	2	3.3 %
Ards	-	0.0 %
Armagh	-	0.0 %
Ballymena	4	6.7 %
Ballymoney	-	0.0 %
Banbridge	-	0.0 %
Belfast East	1	1.7 %
Belfast North	7	11.7 %
Belfast South	2	3.3 %
Belfast West	-	0.0 %
Carrick	-	0.0 %
Castlereagh	-	0.0 %
Coleraine	9	15.0 %
Cookstown	-	0.0 %
Craigavon	4	6.7 %
Down	-	0.0 %
Dungannon	-	0.0 %
Fermanagh	8	13.3 %
Foyle	8	13.3 %
Larne	-	0.0 %
Limavady	2	3.3 %
Lisburn	1	1.7 %
Magherafelt	1	1.7 %
Moyle	1	1.7 %
Newry & Mourne	3	5.0 %
Newtownabbey	1	1.7 %
North Down	-	0.0 %
Omagh	3	5.0 %
Strabane	3	5.0 %
Other	-	0.0 %
Unknown	-	0.0 %
Total	60	100.0 %

Table 3: Location of CS Spray incident (1/7/04-31/12/04)

	Frequency	% of incidents
Domestic residence	6	10.0 %
Outside public house	7	11.7 %
Police station	1	1.7 %
Public building	7	11.7 %
Street / Road	38	63.3 %
Unknown	1	1.7 %
Total	60	100.0 %

Table 4: Type of incident (1/7/04-31/12/04)

	Frequency	% of incidents
Public disorder	32	53.3 %
Domestic dispute	7	11.7 %
Other	19	31.7 %
Unknown	2	3.3 %
Total	60	100.0 %

Table 5: Circumstance of CS Spray incident (1/7/04-31/12/04)

	Frequency	% of incidents
Self-defence	43	50.6 %
Protection of public	14	16.5 %
Protection of colleague(s)	19	22.4 %
Other	9	10.6 %
Total	85	100.0 %

(NB: More than one reason could be given for CS Spray use)

Table 6: Was a warning issued prior to CS Spray discharge? (1/7/04-31/12/04)

	Frequency	% of incidents
Yes	48	80.0 %
No	4	6.7 %
Disputed	2	3.3 %
Unknown	3	5.0 %
N/A	3	5.0 %
Total	60	100.0 %

Table 7: Number of discharges during incident (1/7/04-31/12/04)

	Frequency	% of incidents
None - Spray not used	3	5.0 %
One	30	50.0 %
Two	10	16.7 %
More than two	6	10.0 %
Disputed	2	3.3 %
Unknown	8	13.3 %
N/A	1	1.7 %
Total	60	100.0 %

Table 8: Where was CS Spray discharged? (1/7/04-31/12/04)

	Frequency	% of incidents
Open space	51	85.0 %
Enclosed space	4	6.7 %
Unknown	2	3.3 %
N/A	3	5.0 %
Total	60	100.0 %

Table 9: Evidence of CS Spray after restraint (1/7/04-31/12/04)

	Frequency	% of incidents
No	53	88.3 %
Yes	2	3.3 %
Disputed	1	1.7 %
N/A	4	6.7 %
Total	60	100.0 %

Table 13: Day and time of CS Spray incident (1/7/04-31/12/04)

	Time of day								Total
	0.00 - 02.59	03.00 - 05.59	06.00 - 08.59	09.00 - 11.59	12.00 - 14.59	15.00 - 17.59	18.00 - 20.59	21.00 - 23.59	
Monday	7	1	0	0	0	0	1	0	9
Tuesday	1	0	0	0	0	0	0	0	1
Wednesday	2	1	0	0	0	1	1	1	6
Thursday	3	0	0	0	1	0	0	1	5
Friday	2	1	0	0	0	0	0	1	4
Saturday	7	3	0	1	0	0	2	1	14
Sunday	13	2	3	0	0	0	0	2	20
Total	35	8	3	1	1	1	4	6	59

Table 10: Was advice given to target after CS Spray discharge? (1/7/04-31/12/04)

	Frequency	% of incidents
Yes	28	46.7 %
No	4	6.7 %
Unknown	24	40.0 %
Missing	4	6.7 %
Total	60	100.0 %

Table 11: Was target arrested? (1/7/04-31/12/04)

	Frequency	% of incidents
Yes	44	73.3 %
No	10	16.7 %
Missing	6	10.0 %
Total	60	100.0 %

Table 12: Age and gender profile of CS Spray complainants, (1/7/04-31/12/04)

	Male	Female	Total
16 - 24	7	1	8
25 - 34	9	1	10
35 - 44	5	0	5
Unknown	6	2	8
Total	27	4	31

Appendix

Table 14: Status of CS Spray cases, (1/7/04-31/12/04)

	Frequency	%
Closed - Non Co-operation	8	9 %
Closed - Outside Remit	1	1 %
Investigate	52	58 %
Closed - Ill-Founded	1	1 %
Closed - Outside remit (policy)	1	1 %
Closed - PONI call-in \ call-out N.F.A.	4	4 %
Closed - Not Substantiated - no further action	19	21 %
Closed - Reg 23 Withdrawn	2	2 %
Closed - Informal Disc/ Misc Action Recommended	1	1 %
Closed - Policy Recommendation	1	1 %
Total	90	100 %

(NB: Status of cases recorded at 31/8/2005)

Table 15: Oppressive behaviour allegations, 2001/02 - 2004/05

	Oppressive Behaviour allegations, July - December	Total Oppressive Behaviour allegations
2001/02	1,072	2,117
2002/03	920	1738
2003/04	750	1564
2004/05	799	1509

Table 16: Allegations involving use of batons or CS Spray, 2001/02 - 2004/05

	Allegations involving batons, Jul - Dec	Total allegations involving batons	Allegations involving CS Spray, Jul - Dec	Total allegations involving CS Spray
2001/02	161	312	N/A	N/A
2002/03	138	242	N/A	N/A
2003/04	81	174	N/A	N/A
2004/05	58	99	89	94

Table 17: Allegations involving use of firearms or CS Spray, 2001/02 - 2004/05

	Allegations involving firearms, Jul - Dec	Total allegations involving firearms	Allegations involving CS Spray, Jul - Dec	Total allegations involving CS Spray
2001/02	24	48	N/A	N/A
2002/03	10	34	N/A	N/A
2003/04	9	21	N/A	N/A
2004/05	4	12	89	94

APPENDIX 'A'



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

OCCURRENCE REPORT : CS SPRAY

To: _____

_____ Station/Unit _____ District _____ Date

I have to submit the following particulars of an occurrence involving the use* of CS spray issued to a member of the police service:
(* use* includes drawing the device even if it is not discharged).

1. Date: _____
2. Time: _____
3. Location: _____
4. Station area of occurrence: _____
5. If CS discharged was a warning given? Yes/No* *Delete as appropriate
6. Name, rank, reg no. and station of member involved: _____

7. Full details of members of public involved: _____

8. Describe reaction of person sprayed (eg. dropped to knees, complied with instructions): _____

9. Details of known damage/contamination to property after spraying: _____

Form CS1
19/03/04

1

2: CS1 Form - Back

10. Brief details of circumstances, including reasons for drawing or use of CS spray: _____

11. CS spray produced for inspection by: _____ to: _____
Signed: _____ Rank: _____

Sections A and B - To be completed in every case

SECTION A

To: DCU Commander _____ District _____

(a) CS spray identity number _____ was produced to me by _____
It is issued to _____
Seal - Broken/Not broken* _____
CS canister sealed in evidence bag? Yes/No*. If no, explain reason _____

Weight _____

(b) The officer's notebook was examined and is correct? Yes/No*

(c) CSIS Register Number (if spray used) _____

(d) For information.

(e) There **has/has not*** been a breach of discipline.

Rank _____ *Delete as appropriate

SECTION B

To: **Assistant Chief Constable Operational Support Department**
Head of Internal Investigation Branch (only where breach of discipline has occurred)

These papers are forwarded for your attention as:

(a)* A matter of record.

(b) There has been a breach of discipline. (Head of IIB to appoint an IO)

DCU Commander _____

*Delete (b) if no breach of discipline. Original of this form to be retained at DCU level.

PS/104 1



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