

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

HUMAN RIGHTS ANNUAL REPORT 2009

VICTIMS

CODE OF
ETHICS

PUBLIC
ORDER

OPERATIONS

TRAINING

USE OF
FORCE

PROGRAMME
OF ACTION

FOREWORD

I am pleased to present this 5th Human Rights Annual Report published by the Northern Ireland Policing Board (the Policing Board).

The Policing 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 Policing Board established the mechanism to enable it to discharge this statutory duty in 2003 by publishing a Human Rights Monitoring Framework setting out 12 key areas of police work, which has now been expanded to 15 key areas. Since 2003 we have, through our expert advisors, monitored the PSNI in each of the areas set out in the framework document.

In February 2008 the Policing Board agreed to introduce an innovative approach to the monitoring work by introduction of the thematic inquiry. This approach enables a more in-depth examination of the issues involved in a particular policing area. A core element of the thematic inquiry is community outreach and consultation. It is anticipated the thematic inquiry will, over time, become a significant element of the Policing Board's human rights monitoring framework.

In March 2009 the Policing Board published its first thematic inquiry report examining the PSNI approach to tackling domestic abuse and, in doing so, its compliance with the Human Rights Act 1998. The report made a number of key recommendations for the PSNI which are monitored by the Policing Board's Human Rights & Professional Standards Committee. As a result of the success of the first thematic inquiry, the Committee has committed to conduct two further inquiries, the first of which aims to examine aspects of policing with respect to children and young people. The third inquiry will examine the policing of the Lesbian, Gay, Bisexual and Transgender (LGBT) community in Northern Ireland. Both of these inquiries are due to be published during 2010.

An effective policing service which secures the confidence of the community must integrate and apply human rights standards to the day to day 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 Policing Board's Human Rights & Professional Standards Committee have specific responsibility for scrutinising this work and, assisted by the expertise of its Human Rights Advisor, will oversee the implementation of recommendations made in this Report and in the thematic reports throughout the coming year.

I would like to record the Policing Board's appreciation of the considerable work and expert guidance of its Human Rights Advisor Alyson Kilpatrick in producing this report.



Barry Gilligan
Chairman

HUMAN RIGHTS ANNUAL REPORT 2009

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INTRODUCTION

The Northern Ireland Policing Board is under a duty to secure the maintenance of the police in Northern Ireland; to ensure that the police are effective and efficient; and to hold the Chief Constable to account. In carrying out those functions, the Policing Board is under a further duty to monitor the performance of the police in complying with the Human Rights Act 1998.¹ With the coming into force of the Human Rights Act in 2000, all public authorities, including the police, are under a duty to act in a way which is compatible with the individual rights and freedoms contained within the European Convention on Human Rights.²

Respect for and protection of human rights should be a core function of policing. It must be both practical and effective. The monitoring process therefore scrutinises the PSNI's compliance at all levels including the mechanisms in place to ensure that policy, training, investigations and operations are effective in securing human rights compliance. What is also required, however, is an assessment of the impact of human rights on decision-making on the ground.

The police have a positive obligation to take proactive steps to secure individuals' rights. Human rights are a set of shared principles and values that define the relationship between the police and the community. The police fight crime, they maintain public order, but they do so in association with the community and for the benefit of the community (and indeed are dependant on the co-operation of the community whose confidence they are obliged to secure. A commitment to embedding a human rights based approach to policing goes a long way to achieving this). The Human Rights Act also protects police officers when in the line of duty and it provides a framework within which they operate.

¹ By ss. 3(1), (2) & (3)(b)(ii) of the Police (Northern Ireland) Act 1998.
² By virtue of s.6 Human Rights Act 1998

In February 2003, the Policing Board appointed its first Human Rights Advisor to advise the Board on how to meet its legislative obligations.³ From that time onwards, the Policing Board has monitored the human rights compliance of the PSNI according to the Policing Board's Human Rights Monitoring Framework. This is my first Human Rights Annual Report, having been appointed in January 2009. While it has been a challenging year, with many complex issues arising, I have been afforded access to all documentation I wished to review and have spoken with all officers, from the Senior Command Team to police constables delivering a policing service to the community. I wish to thank the PSNI for the welcome they have extended to me and for their co-operation as I settled into the role.

This Annual Report covers formally the period from 1 April 2008 to 31 March 2009 however it does reference some more recent developments where that has been possible. I have attempted to continue and to build upon the considerable achievements of my predecessors while also recognising that the Policing Board's approach to its human rights monitoring function is adapting to meet a changing environment. In particular, the Human Rights and Professional Standards Committee seeks to highlight areas of policing which most concern the community and analyse the issues with a greater focus on qualitative assessment, culminating in (the recently introduced) thematic reports.

A key focus of the Policing Board's thematic approach is community engagement. Policing with the community together with a focus on a human rights based approach to policing was central to the Patten Commission's vision. The Police (NI) Act 2000 requires the police to carry out their functions in co-operation with, and with the aim of securing the support of, the local community. Human rights compliance is an essential part of that. In undertaking the first of a series of planned reviews I met with key stakeholders to discuss the experiences of victims of domestic abuse and the issues that arise when those victims come into contact with the police. This

³ Keir Starmer QC who was later joined by Jane Gordon. Keir Starmer stood down in February 2008 and Jane Gordon in November 2008.

approach provides an opportunity for the community to assist the Policing Board, by providing the evidence base against which the performance and behaviour of the PSNI can be judged and assessed.

In seeking community input, the Policing Board is able to receive local opinion, address existing problems and identify potential solutions. From a policing perspective the thematic review also serves to highlight awareness of issues and assists the PSNI in responding to them. The first thematic review was published in March 2009. A total of 14 recommendations were made and accepted by PSNI. I will be monitoring the implementation of those recommendations and will produce a further report in the summer of 2010 to include progress on the recommendations and any other issues that have arisen. I am currently working on a review of policing with children and young people, which will be published in early 2010. Following that, policing as it affects members of the lesbian, gay, bisexual and transgender community will be addressed.

The process of thematic review is complementary to the continuous monitoring of human rights compliance, which is reported upon in the Annual Report. In the Annual Report, I measure the PSNI's progress in implementing the recommendations made by previous Annual Reports and examine the PSNI's work in 15 areas. Throughout the course of this year, I have discussed the relevant issues with police officers and staff, have examined documents and observed the PSNI in its operational planning and briefings, its policing of events and in training. Importantly, I have been able to meet with and discuss the PSNI's work with those people most affected by it; members of the community who are policed by the PSNI and whom the PSNI serve.

The PSNI have a new Chief Constable who has expressed his commitment to building upon the progress made by his predecessor Sir Hugh Orde and to delivering a human rights compliant police service with community policing at the core of its business. The 'community' means all members of the community irrespective of identity, racial origin, gender, sexual orientation, background or political conviction. Our community also includes our recent

arrivals. To ensure that a policing service is delivered to all members of the community, the police must engage in training which enables all officers to understand and communicate with different groups.

Religious and cultural differences should be respected but will only be respected if officers are knowledgeable about and sensitive to different experiences and traditions. Importantly, policing must reflect the needs and aspirations of all marginalised and vulnerable groups who are entitled not only to equality of access to the protection of the police but equality of outcome. The PSNI are working hard to achieve that and I have been impressed at the degree to which human rights principles have been integrated within PSNI core policing functions.

One pilot project⁴ which, I think, can exemplify a renewed emphasis of the PSNI on human rights compliance and community policing is Integrated Offender Management (IOM). IOM brings together all of the relevant agencies and the voluntary sector to intervene at an early stage with offenders by addressing the reasons for their offending and taking innovative and bold steps to prevent re-offending. It tackles issues such as homelessness, addiction, mental health issues and family breakdown. Instead of simply catching and convicting offenders, it looks to rehabilitate them for the benefit of the offender but also the community within which the offender resides. A dedicated and committed team of officers are working very hard to integrate within the community and solve the problems of the community. They have adopted a creative and progressive strategy, which places them at the heart of the community which they serve. I wish to commend them for the work they are doing.

A further very welcome development is the appointment of a new Human Rights Training Adviser, located within Police College. Previously, concern was expressed at the delay of the PSNI in replacing the former Adviser who stood down in 2007. While it was disappointing that two years passed without

⁴ The pilot was run in Ballymena and is to be rolled out across the District.

such an important post being filled, the PSNI has now recruited an Adviser with the requisite experience and skill to review training across the service. The PSNI is demonstrating, by such an appointment, a real commitment to improving human rights awareness within the police service. However, the PSNI has stated that it does not intend to appoint a PSNI Human Rights Trainer this year. Until recently, a PSNI officer with human rights training and operational experience worked with the Human Rights Training Adviser. It is disappointing that the post is not to be filled this year as human rights training is critical to ensuring progress is maintained.

In this Annual Report, I make 20 new recommendations. The decreased number of recommendations compared to previous years reflects the real progress which the PSNI has made and continues to make. However, there is more that can and should be done but I am confident that the PSNI will continue to strive to achieve the high standard which the community expects and is entitled to. The PSNI have, this year, implemented a further 20 recommendations in full and two recommendations in part, which were outstanding from the 2007 and 2008 Annual Reports. Only two recommendations remain outstanding. That, in itself, is a remarkable achievement. Since 2005, the PSNI have implemented 155 recommendations in full. In particular, in respect of covert policing, training and complaints and discipline, considerable work has been undertaken to fulfil the recommendations.

Human rights compliance is a continuing legal obligation. It requires regular monitoring, assessment, adjustment and reinvigoration. There is no room for complacency. The Policing Board will work with the PSNI to ensure that a human rights culture not only develops but embeds itself within all policy and practice and across all departments of the police service, as envisaged by Patten. Based on this year's monitoring work, I am satisfied the PSNI is demonstrating its continuing aspiration to meet this obligation.

Finally, I wish to thank those Policing Board officials who have provided me with support and assistance in my first year; it is greatly appreciated. I also

wish to thank Gillian Edge who having joined the Board in recent months has been invaluable in compiling this report.

Alyson Kilpatrick BL

CHAPTER 1: THE PSNI PROGRAMME OF ACTION

Since the first Human Rights Annual Report (the Annual Report) was published in 2005, it has been an ongoing recommendation that the PSNI should adopt a specific Programme of Action on an annual basis to respond to the Policing Board's recommendations. The PSNI has a duty to comply with the Human Rights Act 1998. The Annual Report contains recommendations intended to ensure that compliance is achieved. The PSNI agreed to the recommendation and has now produced four annual Human Rights Programmes of Action in response to each of the Policing Board's Human Rights Annual Reports since 2005.

The PSNI distributes its Programme of Action to the Policing Board, specific officers within the PSNI and the Oversight Commissioner and makes the document available on the PSNI website.

The PSNI has accepted that the annual publication of a Human Rights Programme of Action in response to the Annual Report is a continuing obligation for the police service. The PSNI has acknowledged the benefit derived from a Programme of Action.⁵ That being the case, I make no formal recommendation but reiterate that recommendation 1 of the 2008 Annual Report is a continuing recommendation. The recommendation states that "the PSNI should draw up and publish an annual Human Rights Programme of Action within three months [of the publication] of the Policing Board's Human Rights Annual Reports".⁶

⁵ For example, in the Programme of Action 2008/09.

⁶ Recommendation 1, 2008 Human Rights Annual Report, p.9.

CHAPTER 2: TRAINING

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

Over the course of the last four years, all Police College training materials have 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. There is further work to be done to ensure that trainers are adequately trained in human rights; that trainers have access to specialist human rights expertise; and to establish a credible and effective framework for the internal evaluation of training. I will focus next year on the evaluation of district training to ensure that the high standards applied at the Police College are reflected throughout the service and that all police officers, not just new student officers, have the requisite skills.

APPOINTMENT OF HUMAN RIGHTS TRAINING ADVISER

In the 2006 Human Rights Annual Report (the Annual Report), it was recommended that the PSNI recruit a Human Rights Training Adviser without delay.¹ The PSNI accepted that recommendation and the Police College appointed a Human Rights Training Adviser on 16 October 2006.² Unfortunately, that Human Rights Training Adviser left the PSNI in August 2007. There was a delay of two years before a new Human Rights Training Adviser was appointed in July 2009.³ While it is disappointing that it took so long to replace the previous Adviser, it is a very positive development that the

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

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

³ Thus fulfilling recommendation 2, 2008 Human Rights Annual Report, p.11, requiring the PSNI to recruit a Human Rights Training Adviser without delay.

post is now filled. The Adviser must be given the resources, authority and support required to carry out her function, which is of central importance to the PSNI's delivery of appropriate human rights training and thereafter the delivery of a human rights compliant service.

The PSNI Human Rights Training Adviser has been in post for a short period of time and must acquaint herself with an enormous amount of material. However, I am confident the role will make a positive impact on human rights training across the service. I do, however, record with regret that the post of PSNI Human Rights Trainer, a post which is complementary to the role of Training Adviser, is not to be filled this year. The officer who previously held the post was a committed and effective trainer who brought considerable operational experience to the post. Without that operational input the Human Rights Training Adviser's role will be less effective. Accordingly, I make the recommendation that the PSNI should appoint a PSNI Human Rights Trainer to work within the Police College and in partnership with the Human Rights Training Adviser. In the event that the PSNI does not appoint a PSNI trainer, it should present an alternative proposal for ensuring operational input into training and support for the Human Rights Training Adviser within two months of the publication of this report.

Recommendation 1

The PSNI should appoint a PSNI Human Rights Trainer to work within the Police College and in partnership with the Human Rights Training Adviser. In the event that the PSNI does not appoint a PSNI trainer, it should present an alternative proposal for ensuring operational input into training and support for the Human Rights Training Adviser within two months of the publication of this report.

PSNI AUDIT OF TRAINING MATERIALS

In response to a number of concerns raised in the 2007 Annual Report, the first Human Rights Training Adviser carried out a review of training and made ten recommendations to remedy deficiencies she had identified in training

materials. Trainers were instructed to make the amendments and submit their revised materials to the Police College Quality Assurance Unit for a final review. That review was completed in late 2007. Thereafter, the Police College was asked to provide evidence to the Policing Board of the adoption and implementation of the recommendations and points of good practice.⁴ Those recommendations were passed to the Police College Training Design Specialists. However, evidence has not yet been provided to the Policing Board in accordance with recommendation 3 of the 2008 Annual Report, which was accepted by the PSNI. I therefore consider that recommendation to be outstanding.

I do, however, accept that this is likely to be rectified once the new Human Rights Training Adviser has had an opportunity to fully review the recommendations. I will continue to work with her to ensure recommendation 3 of the 2008 Annual Report is implemented.

Police College bi-annual audit of training materials

In the 2008 Annual Report it was recommended that the PSNI should put in place the regulatory framework for an audit of training materials every two years and for that framework to be in place within six months of the publication of the 2008 Annual Report.⁵ The PSNI accepted that recommendation in part only. It responded that the Police College had conducted a human rights audit during 2007 as a consequence of recommendation 2 of the 2006 Annual Report, which was an extensive undertaking, and that the College would not undertake “such a substantial and expensive piece of work again.” The Police College did, however “recognise the importance of ensuring that Human Rights are appropriately and accurately integrated, where relevant, within training.”⁶

The College subjects all of its existing training materials to an annual quality assurance review. The College “will ensure that the issue of human rights

⁴ Recommendation 3, 2008 Human Rights Annual Report, p.13.

⁵ Recommendation 4, 2008 Human Rights Annual Report, p.14.

⁶ PSNI’s Human Rights Programme of Action 2008-2009, p.6.

integration is inculcated within [this] annual process for existing courses and materials. All new courses and materials are automatically screened for appropriate human rights integration. The new Human Rights Training Adviser ... will develop these arrangements with the Head of the College Quality Assurance Unit".⁷

That being the case, I withdraw recommendation 4 of the 2008 Annual Report but replace it with a new recommendation that the Human Rights Training Adviser should report to the Policing Board within six months of the publication of this report with her analysis of the training materials and advise the Policing Board whether she is satisfied that existing training materials are audited on a regular basis and that all new courses have human rights principles adequately integrated within them.

Recommendation 2

The Human Rights Training Adviser should report to the Policing Board within six months of the publication of this report with her analysis of the training materials and advise the Policing Board whether she is satisfied that existing training materials are audited on a regular basis and that all new courses have human rights principles adequately integrated within them.

DISTRICT TRAINING

The Head of the Police College does not have direct responsibility for district training, although he is responsible for standards, costs and the planning of training across the PSNI.⁸ 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 regularly develop and deliver bespoke training

⁷ PSNI Human Rights Programme of Action 2008-2009, p. 6.

⁸ Head of Police College, Training Strategy Steering Group Minutes, 14 December 2006.

sessions at short notice. Because of that, materials are often not systematically generated or designed.

Given that up to 20% of training is delivered outside the Police College,⁹ it is essential that the PSNI has in place a system to audit the development and delivery of such training. There has not previously been any systematic or strategic approach to the design of District training. Furthermore, District training materials were not included within the Police College human rights audit, referred to above. However, following the internal restructuring of the PSNI District Command Units (DCUs), the PSNI established Professional 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 also 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 and 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. Accordingly, all District training materials are now devised by the Police College, the Joint Forum or by District Trainers in collaboration with specialist advisers. As a result, District training courses and materials are now more consistent and do fully integrate human rights principles.

In the 2008 Annual Report, it was recommended 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 the 2008 Annual Report.¹⁰ That recommendation was accepted by the PSNI, however, the schedule has yet to be delivered to the Policing

⁹ *Ibid.* The majority of training is sourced from external providers.
¹⁰ Recommendation 5, 2008 Human Rights Annual Report, p.15.

Board's Human Rights Advisor and I therefore consider recommendation 5 to remain outstanding. The PSNI should deliver that schedule to the Policing Board's Human Rights Advisor forthwith.

Recommendation 3

The PSNI should provide the Policing Board's Human Rights Advisor with a schedule of all new District training courses devised since April 2008, together with course outlines and materials. That schedule should be provided forthwith.

PERSONAL SAFETY PROGRAMMES

An internal Personal Safety Programme Practitioners' Forum has been established by the PSNI, which 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. The Forum 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. It is a welcome development and a useful mechanism for monitoring and standardising personal safety training delivery.

In the 2008 Annual Report, as a result of minor concerns regarding the adequacy of the integration of human rights principles into the practical aspects of the personal safety training courses, it was recommended 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 12 months of the publication of the 2008 Annual Report.¹¹ While a number of internal evaluations have been carried out, the personal safety training course was not among them.

¹¹ Recommendation 6, 2008 Human Rights Annual Report p.17.

I appreciate that recommendation 6 of the 2008 Annual Report has not yet been implemented due to practical difficulties having been encountered rather than a reluctance to carry out the evaluation. I will continue to correspond with the PSNI in respect of its internal evaluation and report in next years' Annual Report. Accordingly, I withdraw recommendation 6 of the 2008 Annual Report and replace it with the new 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 three months of the publication of this report.

Recommendation 4

The PSNI internal evaluation team should evaluate the integration of human rights principles in the practical aspects of PSNI personal safety training courses within three months of the publication of this report.

FIREARMS TRAINING

In the 2008 Annual Report, it was recommended 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 relevant developments in human rights standards and principles.¹² The PSNI accepted that recommendation and continues to develop and revise its firearms training accordingly.¹³

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.

I am satisfied that the process now in place, whereby relevant cases are identified by the PSNI Human Rights Legal Adviser and the PSNI Human

¹² Recommendation 7, 2008 Human Rights Annual Report, p.19.
¹³ PSNI Human Rights Programme of Action, 2008-2009, p. 7.

Rights Training Adviser and are integrated within firearms' training, ensures that training is current and comprehensive. Recommendation 7 of the 2008 Annual Report has been implemented in full but I remind the PSNI, as is acknowledged by them, that the obligation to develop and revise firearms' refresher training is a continuing one.

HUMAN RIGHTS TRAINING FOR TRAINERS

Human rights training for PSNI trainers is critical to ensuring the proper delivery of human rights training across the PSNI. The course for trainers includes lesson plans and associated case study materials, which are designed by the Police College. They are practical and straightforward and should assist trainers to integrate human rights principles in a more accessible and operational manner. However, after the departure of the first Human Rights Training Adviser the refresher course for specialist trainers was not delivered. For a period of time the PSNI Human Rights Legal Adviser prepared a general one day human rights refresher course for trainers.

In the 2008 Annual Report it was recommended that, following the appointment of a new Human Rights Training Adviser, the PSNI should reinstate annual bespoke human rights refresher courses for specialist trainers to be delivered by the Human Rights Training Adviser.¹⁴ The Human Rights Training Adviser was appointed in July 2009 and is reviewing refresher training to include an assessment of what workshops and seminars are to be included. On that basis, I withdraw recommendation 8 of the 2008 Annual Report but replace it with a new recommendation that the Human Rights Training Adviser includes, as part of her report to the Policing Board set out in Recommendation 2 of this report, her findings in respect of human rights refresher training.

¹⁴ Recommendation 8, 2008 Human Rights Annual Report , p. 24.

Recommendation 5

The Human Rights Training Adviser should, as part of her report to the Policing Board set out in Recommendation 2 of this report, include her findings in respect of human rights refresher training.

In this context, it can also be noted that the PSNI has human rights champions within each of the five specialist training teams.¹⁵ The Police College Human Rights Compliance Officer chairs meetings of the champions which are held on a quarterly basis. The 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.

INTERNAL EVALUATION OF HUMAN RIGHTS TRAINING

The PSNI has an internal evaluation team chaired by the PSNI Human Rights Legal Adviser, which evaluates the delivery of the human rights aspects of all training (with the exception of Special Operations Branch).¹⁶ The internal evaluation team reports twice a year to the Policing Board and highlights areas for improvement. As part of this year's monitoring work, I have monitored the work of the PSNI internal evaluation team.

In the 2008 Annual Report, disappointment was recorded at the failure by the internal evaluation team to evaluate human rights training to the extent anticipated. There were practical reasons for that failure and I am pleased to report that this year there has been reasonable progress in the internal evaluation process with 15 evaluations having been carried out. The training areas evaluated include investigative techniques, use of Attenuating Energy

¹⁵ The five specialist teams are Special Operations Branch; Combined Operational Training; Foundation Training; Leadership and Development; and Crime Training.

¹⁶ The PSNI Human Rights Legal Adviser, the Police College's Human Rights Training Adviser and the Human Rights Advisor to the Policing Board have all reviewed aspects of Special Operations Branch training. I will continue to do so.

Projectiles, cordons, powers of search and close protection. These are areas of police work which can have a serious and direct impact upon the rights of the individual.

The main themes to emerge from the evaluations are as follows:¹⁷

- Trainers are proficient at translating lesson plans to practical situations. For example, during a lesson for trainee investigators,¹⁸ the human rights requirement to keep a full and accurate record of steps taken during the investigation were set out clearly. In another, where use of force was an issue, the various practical aspects of human rights were highlighted and explained in a practical way;
- Trainers emphasise the key concepts of necessity and proportionality and provide clear guidance on how to integrate those concepts into practical scenarios;
- Some trainers wanted greater access to resources to enable them to keep up to date with human rights law;
- Students were comfortable with, and accepting of, human rights teaching. This is very welcome as it has been reported previously that there is human rights fatigue within the PSNI. I repeat that human rights compliance is not a matter of choice; it is a legal requirement and therefore police officers must be encouraged to embrace human rights compliance as a fundamental part of their core policing function;
- There has been renewed emphasis on the United Nations Convention on the Rights of the Child. For example, the lesson regarding Attenuating Energy Projectiles contains significant references to the Convention. The trainer made innovative use of materials provided by UNICEF, as well as relying on the standards set out in the PSNI Firearms Policy.¹⁹ This is a welcome development and reflects the commitment of the organisation to integrating respect for human rights and the rights of the child into every aspect of their work;

¹⁷ Based upon the report of the PSNI Human Rights Legal Adviser, November 2009.

¹⁸ *Role of the SIO*; evaluation carried out on 25 September 2009.

¹⁹ PSNI Policy Directive 12/08, Police Use of Firearms, 28 August 2008.

- Trainers prefer to integrate human rights issues into lesson plans, rather than teaching them as a separate part of the lesson. This is exactly as it should be. Human rights principles are at the core of all policing operations; they are not a separate or additional topic to be considered after other policing functions;
- There remains some confusion amongst officers on the distinction between the engagement of human rights and the interference or violation of human rights. This is not surprising and is shared by many, including lawyers. However, the PSNI trainers are considering how best to deal with that and the Human Rights Training Adviser is working with them to ensure there is a better understanding of the distinction;
- Trainers appreciate the internal evaluation process and welcome the scrutiny and reassurance it provides;
- Students understand that the mere existence of a power is not sufficient rationale for its use and that the context and consequences of any use must always be considered; and
- Some evaluators query the long-term sustainability of the internal evaluation process given the number of evaluations required by the Policing Board.

It is important to reflect upon the above and recognise the very positive results, address the negative and also be mindful of the practical constraints within which the evaluation process is conducted.

It is clear that the Human Rights Act 1998 poses many challenges for police, but it also provides opportunities. For example, a focus on the investigative obligation reassures officers that human rights are not solely used *against* police, but rather a framework within which police action must be justified and which protects the rights of individuals. There appears to be a growing acceptance and understanding of human rights within police training. That is encouraging but no more than is absolutely required of any police service. The Human Rights Act 1998 is a binding legislative enactment, which places a positive obligation on the PSNI to protect the rights contained within the

European Convention on Human Rights. Compliance with the Human Rights Act is a legal imperative as much as is compliance with legislation such as the Police and Criminal Evidence (NI) Order 1989.

In the 2008 Annual Report, it was recommended 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 of some trainers.²⁰ The PSNI accepted that recommendation and stated that the Police College is satisfied that all of its trainers who are involved in use of force training are familiar with, and knowledgeable about, the differing tests for the use of force. However, to demonstrate its commitment in this area the College intends to direct all of its trainers to undertake an e-learning package that is currently being developed on issues relating to the use of force. That training package is a training resource for the wider Police Service.²¹ That being the case I am satisfied that recommendation 9 of the 2008 Annual Report has been implemented.

I will continue to monitor this critical aspect of police training over the course of the next 12 months and will liaise with the Human Rights Training Adviser and Human Rights Legal Adviser to consider any issues that arise.

I accept the difficulty identified by the Human Rights Legal Adviser regarding sustainability of the internal evaluation process, in particular the number of evaluations required by recommendation 10 of the 2008 Annual Report.²² I also bear in mind the comments of the trainers that it is a helpful process. It may be that with a new Human Rights Training Adviser in post a new mechanism can be agreed which achieves the substantive purpose of the process; to ensure that training is appropriate, current and effective in a more productive and time efficient manner. I take into account the fact that there was a comprehensive external evaluation of human rights training in

²⁰ Recommendation 9, 2008 Human Rights Annual Report, p.26.

²¹ PSNI's Human Rights Programme of Action 2008-2009, p.8.

²² Recommendation 10, 2008 Human Rights Annual Report, p.28.

2007/2008²³ and that there is a Training Strategy Steering Group whose purpose is to ensure that training is of a high quality. In the meantime, however, the PSNI should continue the evaluation process for a further 12 months and report on its findings. Recommendation 10 is therefore implemented only in part and will be reviewed in next year's Annual Report.

²³ The evaluation was carried out by the International Human Rights Network which is a non-governmental organisation that supports states, intergovernmental organisations and the private sector in applying human rights based approaches in their work. The report was published in April 2008, which is considered in detail in the 2008 Human Rights Annual Report.

CHAPTER 3: POLICY

Police policy sets out police powers and duties and provides guidance to police officers on the legislative framework within which they operate. All policy should be contextual and ensure that human rights provisions are understood and complied with in every aspect of police practice. Only when police policy is compliant with human rights provisions will decision-making, training and police action comply with the Human Rights Act 1998. Ultimately, all police policy should have embedded within it human rights considerations in a practical and effective way. Human rights compliance is a legal imperative and as much a part of policing law as other policing legislation. The PSNI should strive to achieve human rights compliance as an integral and instinctive part of all policy writing.

PSNI REVIEW OF POLICY

In the 2008 Human Rights Annual Report (the Annual Report), it was recommended that the PSNI 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 2009.¹ This recommendation was made in light of a PSNI internal review undertaken a number of years previously to ensure that policy was compliant with the General Order on Policy, Procedure and Guidance² which sets out a rigorous framework for ensuring that PSNI policy is clear, consistent and human rights compliant. The Policing Board's Human Rights Advisors have made a number of recommendations in each of their Annual Reports since 2005 in respect of that review.³ Their primary concern was that a number of policies were out of date and did not take account of the Human Rights Act 1998 or the PSNI Code of Ethics.

¹ Recommendation 11, 2008 Human Rights Annual Report, p.37.

² Which has now been replaced by Service Procedure 32/2009, Policy Directives and Service Procedures, 16 October 2009.

³ Recommendations 8 and 9, 2005 Human Rights Annual Report, pp. 43 and 45; recommendations 13 and 14, 2006 Human Rights Annual Report, pp. 18 and 19; and recommendation 6, 2007 Human Rights Annual Report, p.45.

In reporting to the Policing Board on their implementation of recommendation 11 of the 2008 Annual Report, the PSNI has indicated that it has in place a process whereby all service instructions that are overdue for review by one year are now monitored by an Overview System. The originating departments are responsible for reviewing their service instructions in accordance with current service policy and in respect of grossly overdue reviews. Reports emanating from the Overview System are delivered to the PSNI Organisational Development Committee (ODC) which holds Heads of Department to account in respect of the non-completion of reviews. The ODC in turn provides assurances to the Audit and Risk Committee of the PSNI in respect of all high priority matters monitored by the Overview System.⁴

By ensuring that regular review of Policy Directives and Services Procedures remains part of PSNI governance structures and assurance framework, I am satisfied that the concerns raised in previous Annual Reports have been addressed and that recommendation 11 of the 2008 Annual Report has been implemented. However, in order that the Policing Board can monitor the effectiveness of the Overview System, I make the recommendation that the PSNI provide the Policing Board with details, on an annual basis, of all Policy Directives and Service Procedures that are overdue for review by more than one year and include within that briefing the reason for the delay and the date by which the review is to be completed.

Recommendation 6

The PSNI should provide the Policing Board with details of all Policy Directives and Service Procedures that are overdue for review by more than one year and include within that briefing the reason for the delay and the date by which the review is to be completed. The first briefing should be presented within three months of the publication of this report and thereafter on an annual basis.

⁴ Letter from ACC Operational Support to Policing Board's Director of Policy dated 9 February 2009.

It was reported in the 2008 Annual Report that the findings of a selective audit of PSNI policies and procedures, carried out by the Policing Board's previous Human Rights Advisor, was generally positive with the Policy Directives and Service Procedures, which were reviewed, having been revised. They clearly incorporated relevant human rights standards.⁵ The PSNI agreed to develop a methodology for dip-sampling their Policy Directives and Service Procedures as part of the quality assurance element of their internal review and indicated that they would carry out the dip-sampling exercise on a bi-annual basis. It was recommended that the PSNI report to the Policing Board on the findings of the two dip-sampling exercises completed in 2008/09 and identify the action taken in response to any deficiencies identified in the policies and procedures sampled.⁶

The PSNI completed the two dip-sampling exercises in December 2008 and April 2009 and reported their findings.⁷ In each exercise 14 documents were subjected to the quality assurance process. During both exercises it was found that the majority of the documents sampled had been prepared within existing PSNI drafting guidelines, had displayed their consideration of human rights issues and the PSNI Code of Ethics, and that relevant articles of the European Convention on Human Rights (ECHR) were referenced with a comprehensive explanation being provided. It was noted during the exercise that those responsible for the drafting were becoming more aware of the need to consider human rights, equality and outward facing issues at every stage of policy writing.

Of the 14 documents considered in each exercise, there were three that required remedial action to be taken, but that was largely due to a failure to follow guidelines on format. An outstanding issue highlighted in both exercises was found to be the lack of compliance with the 'Government Protective Marking Scheme' however, as this was only made a requirement relatively recently the PSNI anticipate that this will be rectified during future reviews of

⁵ 2008 Human Rights Annual Report, pp. 38 – 40.

⁶ Recommendation 12, 2008 Human Rights Annual Report, p.40.

⁷ Letters from ACC Operational Support to Policing Board dated 9 February 2009 and 13 May 2009.

policies and procedures. I am therefore satisfied that recommendation 12 of the 2008 Annual Report has been implemented in full.

Whilst the dip-sampling exercise is a valuable tool, the PSNI has indicated that the cost of conducting this exercise in the future may be disproportionate to the benefits, particularly when the two exercises already completed only revealed relatively technical issues. I recognise that the Overview System referred to above sets in place a system for regular review of all PSNI policies and service procedures which, coupled with the Policing Board's continued oversight and ability to audit policy documents at random, this may prove to be a sufficient mechanism for quality assurance. However, I do remind the PSNI of the fundamental importance that policy is kept up to date and reflects properly any new guidance or legal obligations. I intend to discuss this with the PSNI and shall report further in next year's Annual Report.

REFERENCE TO PSNI POLICIES

Concerns were raised in the 2008 Annual Report that officers do not routinely refer to relevant policies, procedures and guidance to inform themselves of their police powers and duties, or to guide their conduct, and that they may be referring to policies or procedures on the PSNI intranet that have been cancelled or superseded. As a result, it was recommended that the PSNI should provide the Policing Board with 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 supervisors' daily taskings and briefings to officers.⁸

The PSNI has advised the Policing Board that the Police College conducts an Environmental Scanning role of outside agency publications and produces a monthly report to department heads within the College. The report outlines key training issues, strategic topics and any best practice identified which

⁸ Recommendation 13, 2008 Human Rights Annual Report, p.42.

could possibly have an impact on the way training is delivered within the College. The College has also developed a Forum which includes the District Training Managers, Head of Operational Programmes, Human Rights Training Adviser and the Diversity Training Manager. This Forum meets regularly and various information/training issues are discussed and shared amongst the Districts. The College has offered the District Trainers the use of any training facilities that they can provide. Training request forms⁹ have been introduced and designed to ensure that departments with any training needs can raise these with the College.¹⁰ This is a robust process which should ensure that training at all stages throughout the PSNI is kept under review and up-dated as necessary. I therefore consider recommendation 13 of the 2008 Annual Report to have been implemented in full but will continue to monitor the process and report on whether it has achieved its purpose.

THE POLICY WRITERS' COURSE

All officers and police staff involved in policy writing must have attended the Human Rights Compliant Policy Writers Course as delivered by the PSNI Policy, Planning and Performance Unit. The course is delivered in the form of a workshop addressing the following topics:

1. Definitions of policy and procedure (referring explicitly to the PSNI policy directive on policy and procedure);
2. Human rights awareness and s.75 of the Northern Ireland Act 1998 awareness; and
3. PSNI policy audit tool template.

Previously, officers attended these workshops on a voluntary basis. However, in response to recommendation 14 of the 2008 Annual Report¹¹ which I consider to be implemented in full, it is now a requirement that all officers and

⁹ PSNI Form TR2.

¹⁰ Letter from ACC Criminal Justice to Policing Board's Human Rights Advisor dated 1 September 2009.

¹¹ Recommendation 14, 2008 Human Rights Annual Report, p.44.

staff involved in authoring policy must attend the training.¹² That is welcomed and I will continue to monitor its application over the course of next year's reporting period.

PSNI POLICY ON RETENTION OF DNA

By an amendment to the Police and Criminal Evidence (NI) Order 1989, the police *may* now retain fingerprints, DNA samples and DNA profiles after the purpose for which they had been obtained has been fulfilled. There is no statutory time limit and the power applies equally to children as to adults. The only limitation is as to the use to be made of the material: for the prevention or detection of crime; the investigation of an offence; or the conduct of a prosecution. A DNA sample is the raw material which contains a person's genetic information. A DNA profile is that information which is extracted from the sample and recorded in coded form. The number of fingerprints, samples and profiles retained by the PSNI over the last three years has increased dramatically. That is perhaps not surprising given the legislative basis for such retention.¹³

In 2004, the House of Lords considered a case brought by two individuals (one adult, one child) seeking the destruction of DNA samples and DNA profiles which had been retained despite neither of the individuals being convicted of an offence. The House of Lords held that retention in such cases was lawful. However, the case was subsequently considered by the Grand Chamber of the European Court of Human Rights (ECtHR) whose judgment was delivered on 6 December 2008.¹⁴ The ECtHR found that the blanket policy in England and Wales, which is mirrored in Northern Ireland, of retaining indefinitely the DNA samples, materials and fingerprints of all people

¹² PSNI Service Procedure 32/2009, para. 3(3)(b).

¹³ There is clear evidence in Great Britain that certain groups are more likely to have their information retained than others. Sedley LJ was so concerned at the apparent disparity between different racial groups (40% of black men, 13% of Asian men and 9% of white men) he proposed extending the database to the entire population.

¹⁴ *S and Marper v The UK* (App Nos. 30562/04 and 30566/04).

who have been arrested but not convicted was in breach of Article 8 of the European Convention on Human Rights.¹⁵

The Government commenced a public consultation in response to the ECtHR judgment: *Keeping the Right People on the DNA Database*. The Government's proposal is to remove the current blanket retention policy and replace it with a retention framework, the purpose of which is to distinguish "between different kinds of case and for the application of strictly defined storage periods". I have advised the Policing Board on the proposals contained within the consultation document.¹⁶

In the course of giving judgment, the ECtHR made reference to the policy adopted in Scotland as an example of what *might* be considered a lawful policy. In Scotland, DNA samples and profiles are destroyed if a suspect is not proceeded against, is acquitted or is given an absolute discharge save in those cases where the person is arrested on suspicion of certain serious sexual and violent offences. Even in the case of serious sexual and violent offences, DNA samples and profiles must be destroyed after three years unless a Chief Constable applies to a Sheriff to extend the period for a further two years. After five years, the DNA samples and profiles must be destroyed and no further extension is possible.

The regime under discussion relates to people who have not been convicted of any offence. The ECtHR stressed the importance of treating those people who have not been convicted of anything (and in many cases not charged) as innocent people for all purposes. The PSNI has indicated that it does not consider amendments to their existing policy to be reasonable at this time pending amendment of legislation to reflect the decision of the ECtHR in the case of *S and Marper v United Kingdom*.

Importantly, PACE contains a *power* but not a *duty* to retain DNA samples, profiles and fingerprints. ACPO guidance does not have statutory authority

¹⁵ Article 8 ECHR, right to respect for private and family life.

¹⁶ That advice is available on the NIPB website.

and does not bind any police service. The PSNI is at liberty to adopt a policy that is in keeping with the European Court's judgment. The PSNI could adopt the Scottish model without waiting for the Government's strategy to be revised and implemented. Having said that, if the Government does legislate by Regulations they may supersede any revised PSNI policy. Pending the Government's implementation of its final strategy, the PSNI will continue to operate its current policy.

In the meantime, however, a person may apply to have samples etc. destroyed. The criteria for destruction as currently formulated and set out in guidance issued by ACPO¹⁷ is an operational matter for each Chief Constable to consider based on the individual circumstances of each case. ACPO Guidance states that removal from the database should be limited and reserved for exceptional cases. However, given the findings of the European Court (particularly as regards children and young people) a relevant factor for the Chief Constable to consider in each case is the impact upon the applicant's Article 8 rights and the United Nations Convention on the Rights of the Child. In respect of individual applications made to the Chief Constable for the destruction of material and profiles the PSNI should approach that decision by taking account of the *Marper* case and not limiting those applications to the exceptional case as proposed by ACPO.

In confirming that until the Government so directs by legislative change it will continue to apply the policy as before, the PSNI argues that it is "obliged to act in accordance with the provisions of [PACE]." As previously stated, the PSNI is not obliged *at law* to retain DNA samples, profiles and fingerprints but is *entitled* to do so. I therefore make the recommendation that the PSNI should review its policy in respect of applications to have DNA material, profiles and fingerprints removed from the database and report its findings to the Policing Board. That review should include expressly, consideration of the rights of children and young people. The PSNI should report within three

¹⁷ Exceptional Case Procedure within ACPO Retention Guidelines for Nominal Records on Police National Computer.

months of the publication of this report. The PSNI should set out its findings as to whether, and if so why, the policy is necessary and proportionate.

Recommendation 7

The PSNI should review its policy in respect of applications to have DNA material, profiles and fingerprints removed from the database and report its findings to the Policing Board. That review should make reference to Article 8 of the ECHR and include expressly, consideration of the rights of children and young people. The PSNI should report within three months of the publication of this report. The PSNI should set out its findings as to whether, and if so why, the policy is necessary and proportionate.

CHAPTER 4: OPERATIONS

Effective, efficient and impartial policing must be central to a human rights compliant police service. That is particularly pertinent when police are carrying out operations. The majority of police operations raise human rights issues. By way of example, Articles 2 and 3 of the European Convention on Human Rights (ECHR) are engaged in any operation requiring the use of force and Article 8 is engaged in operations involving the use of surveillance.¹ Human rights are engaged in respect of strategy and the planning of the operation as much as in the execution of it. Accordingly, the Policing Board considers the monitoring of operations as critical to its overall assessment of the PSNI's compliance with the Human Rights Act 1998.

OPERATIONS

Operations targeting anti-social behaviour and youths causing annoyance

This year, I am conducting a thematic inquiry into policing with children and young people. As part of that process, I will be observing live operations and carrying out a review of operations involving children and young people. I will be reporting separately in early 2010 but take this opportunity to stress to officers that children and young people must be treated in a manner which appropriately reflects their vulnerability and with an awareness of the issues they face.

I note that the PSNI has already revised and reissued its policy, which references clearly the rights, vulnerabilities and issues faced by children and young people in operational briefings.² Furthermore, within PSNI Policing with the Community Strategy,³ respect for and engagement with children and young people is emphasised, as are the principles enshrined in the United

¹ Article 2 ECHR, right to life; Article 3 ECHR, right not to be subjected to torture, inhuman or degrading treatment; and Article 8 ECHR, right to private and family life.

² Recommendation 9, 2007 Human Rights Annual Report, p.55.

³ The five principles of which are: service delivery; problem solving; partnership; empowerment; and accountability.

Nations Convention on the Rights of the Child (UNCRC). In the course of the thematic inquiry I will be considering whether those principles have been effectively and practically incorporated into training, operational briefings and the conduct of operations. In respect of public order operations, I have observed Gold and Silver briefings during which Commanders did specifically consider the rights and vulnerabilities of children and young people as part of their operational planning. This is considered further below.

Recognising its duty to promote equality of opportunity, the PSNI has now abandoned the classification 'youths causing annoyance'. This is a positive and welcome step which addresses the misconception that it is only youths who cause annoyance or are guilty of anti-social behaviour.

Operations targeting unlawful public sexual activity

The PSNI has a duty to promote equality of opportunity⁴ and must not discriminate against any person on the basis of, amongst other things, sexual orientation.⁵ That means that all of the Convention rights must be secured without discrimination. Police officers have a duty not to interfere with a person's right to respect for their private life save where the interference is lawful, proportionate and necessary in a democratic society and in pursuit of a legitimate aim.⁶ The right to respect for private life is particularly important in arrest operations. For example, the consequences of arresting a suspect at his or her home in connection with unlawful public sexual activity may be catastrophic for the suspect and the family, leading to disclosure of deeply sensitive information. Alternatives, such as voluntary attendance, should always be considered.

The PSNI policy on policing unlawful public sexual activity was amended and reissued on 19 June 2008⁷ and now includes specific guidance to officers on how they should ensure that arrests are conducted sensitively and with the

⁴ By virtue of s.75 of the Northern Ireland Act 1998.

⁵ Article 14 ECHR, prohibition of discrimination.

⁶ Article 8 ECHR, right to private and family life.

⁷ In accordance with recommendation 11 of the 2007 Human Rights Annual Report, p.58; PSNI Service Procedure 19/2006 Policing Unlawful Public Sexual Activity, 19 June 2008.

least interference with ECHR Article 8 as possible.⁸ The policy comprehensively integrates human rights principles both in relation to the policing of an operation and dealing with individuals who may be subject to an arrest. The recent revision of the PSNI policy is welcomed however, it is the application of that policy which will determine whether the relevant principles are adequately protected.

The policy states that all unlawful public sexual activity should be treated as unacceptable, whether it is between heterosexual or homosexual people. However, it also states that the majority of complaints received by police relate to unlawful public sexual activity between men. I remind police officers that they must be careful not to ascribe illegality, or respond differently, to that activity because the individuals are men. Officers must be sensitive to, and mindful of, the possibility that some complaints may be motivated by malice as a result of homophobia. For example, it is incumbent on every officer responding to a complaint to treat *both* the victim *and* the alleged perpetrator sensitively and without stereotyping.

This is particularly important given the unacceptably high number of homophobic hate crimes perpetrated upon members of the lesbian, gay and bisexual community in Northern Ireland. In a recent report by the Rainbow Project, *Through Our Eyes*, it was recorded that of those surveyed, 21% of gay and bisexual males and 18% of lesbian, gay and bisexual females had suffered a homophobic hate crime in the past three years.⁹ That is even more concerning when matched against the finding that many do not report the incident to the police. The right to respect for private life includes the right of a man or woman not to reveal their sexual orientation. Police officers should be mindful of the risk of 'outing' a person unnecessarily.

In 2007, the Policing Board's Human Rights Advisors reported on an after-the-event audit of an operation conducted in 2005 by officers in Coleraine District Command Unit (DCU) in relation to reported unlawful public sexual activity

⁸ Recommendation 11, 2007 Human Rights Annual Report, p.58.

⁹ *Through our Eyes*, John O'Doherty for the Rainbow Project, June 2009.

following concerns raised by the Rainbow Project. It was recommended that the PSNI should consider adopting the detailed policy and deployment log formulated by Coleraine DCU as its standard operational planning log.¹⁰ What was particularly impressive in that operation was the auditable record of police decisions and actions taken in relation to the operation, setting out details of the agreed objectives and targets for the operation including consultation with other agencies, community impact considerations, media strategy, human rights considerations and the rationale for and use of covert surveillance. The deployment record in Coleraine DCU requires that human rights considerations are articulated when setting out the aims and objectives of the operation. In his 2007 report, the Surveillance Commissioner described the adoption of such a policy and deployment log as an example of good practice.¹¹

The PSNI indicated in its Human Rights Programme of Action 2007/08 that it accepted the recommendation and that it would be progressed as part of the Service Procedure on Human Rights and Public Events.¹² However, it added that because the operation had involved authorisations under the Regulation of Investigatory Powers Act 2000 (RIPA), the recommendation had been referred to the PSNI Crime Operations Central Authorisation Bureau (CAB) for further consideration.¹³ CAB has indicated that it is aware of the operational policy and deployment log and welcomes standardisation and has, in fact, promoted the model to intelligence co-ordinators.¹⁴ Having considered this further, Operational Support has rejected the recommendation as “unnecessary bureaucracy and a duplication of the processes currently in place within PSNI”.¹⁵

While I accept that the PSNI has considered adopting the Coleraine DCU’s policy and deployment log as its standard operational planning log, and

¹⁰ Recommendation 10, 2007 Human Rights Annual Report, p.56.

¹¹ Report of the Chief Surveillance Commissioner, 2007.

¹² PSNI Human Rights Programme of Action 2007-2008, p.12.

¹³ Letter ACC Operational Support to Policing Board’s Human Rights Advisor dated 14 August 2008.

¹⁴ Email to Policing Board’s Human Rights Advisor dated 6 November 2009.

¹⁵ PSNI Human Rights Programme of Action 2008 – 2009, p.19.

therefore that recommendation 10 of the 2007 Human Rights Annual Report (the Annual Report) has been implemented, I am disappointed that the PSNI response in the Human Rights Programme of Action 2008 - 2009 is to discount the recommendation as unnecessary bureaucracy. Therefore I make the new recommendation that the PSNI provide to the Policing Board's Human Rights Advisor, within three months of the publication of this report, an explanation of the processes currently in place, outlining how they secure the protection of human rights and, by cross reference, indicate how they adopt the best practice model of the Coleraine DCU. In the event that those processes do not adequately address the issue I will recommend the adoption of the Coleraine policy and deployment log as the PSNI's standard operational planning log.

Recommendation 8

The PSNI should provide to the Policing Board's Human Rights Advisor, within three months of the publication of this report, an explanation of the processes currently in place, outlining how they secure the protection of human rights and, by cross reference, indicate how they adopt, in substance, the best practice contained within the Coleraine DCU policy and planning log.

In 2010, the Policing Board will be addressing policing issues as they affect the Lesbian, Gay, Bisexual and Transgender community and will consider the above issues in more detail.

PSNI STOP AND SEARCH POWERS

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.¹⁶ 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 a number of prescribed matters.¹⁷

Terrorism Act 2000 Sections 44 and 45

The Terrorism Act 2000 (TACT), s.44 authorises a police constable in uniform to: (i) stop a vehicle and search 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);¹⁸ and (ii) stop a pedestrian and search the pedestrian and anything carried by him or her.¹⁹ An authorisation may be given only if the person giving it considers it expedient for the prevention of acts of terrorism.

TACT s.45 requires that the power conferred by s.44 must be exercised only for the purpose of searching for articles of a kind which could be used in connection with terrorism. The power to stop and search under s.44 flows from an authorisation which can only be granted 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.²⁰

An authorisation under s.44 takes immediate effect but must be confirmed by the Secretary of State within 48 hours.²¹ If not so confirmed, the authorisation expires. An application for an authorisation must contain prescribed information including the reason for the authorisation, a full description and justification for the geographical area to which it applies and full information regarding the operational use of the powers, including training, briefing and statistical returns. The authorisation must be directed to the overriding objective that it is expedient for the prevention of acts of terrorism.

As the exercise of the power is predicated upon a lawful authorisation rather than reasonable suspicion, this marked a departure from the long-established

¹⁶ PACE, Article 3.

¹⁷ PACE, Articles 4(4) and 5(7)-(9).

¹⁸ TACT, s.44(1).

¹⁹ TACT, s.44(2).

²⁰ TACT, s.44(3).

²¹ TACT, s.46(4).

principle that a person could not have his or her freedom interfered with save where there was a reasonable suspicion of a criminal offence. The power is intrusive by its very nature and therefore police officers must be particularly mindful that it is exercised in a way that is lawful, proportionate and necessary to pursue a legitimate aim. The s.44 power is “a unique power designed to combat a heightened threat and must only be applied where it can be justified.”²²

All officers should be fully briefed about the extent of the power and how it is to be used. They should be reminded that other powers are available and may be appropriate in a given situation. A comprehensive understanding of the legal issues and the effect an exercise of the power may have on the community is essential to ensure officers exercise the power in a proportionate manner. For example, the PACE power should be used where there is a reasonable suspicion of the commission of an offence. The s.44 authorisation should never be viewed as an easy alternative to the PACE power; police officers should resist the temptation to resort to s.44 because he or she need not have reasonable grounds for suspicion.

Furthermore, by s.43 TACT a constable may stop and search a person whom he or she reasonably suspects to be a terrorist to discover whether he or she has in his or her possession anything which may constitute evidence that he or she is a terrorist. A constable may search a person arrested under s.41 to discover whether s/he has in his or her possession anything which may constitute evidence that he or she is a terrorist. A search of a person under this section must be carried out by someone of the same sex. A constable may seize and retain anything which s/he discovers in the course of a search of a person and which s/he reasonably suspects may constitute evidence that the person is a terrorist.²³

²² National Policing Improvement Agency, Practice Advice 2007.

²³ In the third quarter of 2009 the PSNI used s. 43 and included it within the monitoring analysis. Next year the Policing Board will be reporting upon the use of s.43.

The House of Lords has considered s.44 TACT and held that it did not conflict with the ECHR *per se* but did emphasise the importance of strict observance of the regime; the police cannot act arbitrarily and the person stopped must have explained to him or her that the search is for terrorism materials pursuant to the Act.²⁴ While s.44 authorisations may be used to disrupt potential terrorist activity, such as reconnaissance, this can be disruptive to, and alienate, members of the community. The powers conferred on a police officer by s.44 may only be exercised to search for articles of a kind which could be used in connection with terrorism.

It is worth reiterating the salutary words of Lord Carlile of Berriew QC in his report on the operation in 2008 of the Terrorism Act 2000:

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. Its primary purpose is to deal with operationally difficult places at times of stress, when there is a heightened likelihood of terrorists gaining access to a significant location. For example, I have no criticism of its careful use at the time of a major demonstration at London Heathrow Airport: terrorists might well use the opportunity of participation in such a demonstration to enter, photograph or otherwise reconnoitre, and otherwise add to their knowledge of a potential target such as Heathrow. Nor do I criticise its use at or near critical infrastructure or places of special national significance. The figures, and a little analysis of them, show that section 44 is being used as an instrument to aid non-terrorism policing on some occasions, and this is unacceptable.²⁵

The Policing Board will, over the coming months, be carrying out a review of PSNI policy and training in respect of the exercise of the power and will work with the PSNI to ensure that the power provided by s.44 is exercised in

²⁴ *R (Gillan) v (1) Commissioner of Police for the Metropolis (2) Secretary of State for the Home Department*, which is now pending judgment from the European Court of Human Rights.

²⁵ *Report on the Operation in 2008 of the Terrorism Act 2000 and of Part I of the Terrorism Act 2006*, Lord Carlile of Berriew QC, June 2009.

accordance with the Human Rights Act 1998. Furthermore, the PSNI has offered to me, as Human Rights Advisor, access to the authorisation applications and information relevant to the authorisations. I will be examining that documentation and reporting further to the Human Rights and Professional Standards Committee with my findings. Thereafter, a mechanism will be developed to enable a dip-sampling review to be carried out at regular intervals, to be agreed with the PSNI.

Justice and Security (Northern Ireland) Act 2007

Under s.21 of the Justice and Security (Northern Ireland) Act 2007 (JSA), 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.²⁶ The power to stop a person includes the power to stop a vehicle.²⁷ Under s.24 JSA, a police officer has power to stop and search a person in a public place to ascertain whether the person has munitions²⁸ or wireless apparatus²⁹ unlawfully with him or her; 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;³⁰ enter and search any premises for the purpose of ascertaining whether there are munitions or wireless apparatus unlawfully on the premises,³¹ and to seize and, if necessary, destroy any munitions in the course of the search.³² A police officer also has the power under the JSA 2007 to enter any premises if s/he considers it necessary in the course of operations for the preservation of the peace or the maintenance of order.³³

The UK Government was required to appoint a person to conduct a review of the operation of these powers.³⁴ The Government's Independent Reviewer of JSA, Robert Whalley CB, reported in 2008 and is currently in the process of

²⁶ JSA, s.21(1).

²⁷ JSA, s.21(5).

²⁸ Explosives, firearms and ammunition and anything capable of being used in the manufacture of an explosive, firearm or ammunition: JSA, Schedule 3, s.1(3)(a).

²⁹ A scanning receiver or a transmitter (as defined): JSA, Schedule 3, s.1(3)(f).

³⁰ JSA, Schedule 3, s.4.

³¹ JSA, Schedule 3, s.2(1).

³² Unless it appears that the munitions are being held and will be used lawfully: JSA, Schedule 3, s.5.

³³ JSA, s.23(1).

³⁴ JSA, ss.40(1) and (2).

publishing his second review.³⁵ I have met with Mr. Whalley to discuss his review and to share information, which has proved a very useful exercise. His review appears to have been thorough and impartial and I look forward to reading it on publication. I will be considering in particular whether any observations impact upon PSNI policy or practice.

Analysis of the use of stop and search

Last year, due to concerns raised by Members of the Policing Board, District Policing Partnerships and others, there was a greater focus on the use of stop and search powers by the PSNI. Historically, the Policing Board's Human Rights Advisors analysed trends in the use of stop and search powers to evaluate whether the use of the powers appeared in general terms to be appropriate, proportionate and not exercised so as to discriminate.³⁶ In the 2007 Annual Report, it was reported that difficulties emerged with making that assessment.³⁷ It was recommended that the PSNI should take steps to establish an effective method of monitoring the use of stop and search powers across Districts.³⁸ The PSNI accepted that recommendation and developed a revised template which provides District Commanders with a quarterly statistical report on the use of police powers under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the Terrorism Act 2000 (TACT) and the Justice and Security (Northern Ireland) Act 2007 (JSA). The revised template provides more detailed information on the use of the powers according to District and analyses the age, gender and ethnic profile of those stopped and searched.

Concern was also expressed at the delay by the PSNI to align 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. In July 2008, the PSNI confirmed its intention to change the ethnic classification system and in October 2008 the Policing Board's Human

³⁵ Robert Whalley CB was appointed the Independent Reviewer of JSA in May 2008.

³⁶ As emphasised in the Concluding Observations UN Human Rights Committee Report CCPR/C/GBR/CO/6, 21 July 2008, para.29.

³⁷ 2007 Human Rights Annual Report, chapter 4, pp.66-67.

³⁸ Recommendation 12, 2007 Human Rights Annual Report, p.67.

Rights Advisor reported her satisfaction that recommendation 12 of the 2007 Annual Report and recommendation 19 of the 2006 Annual Report were implemented in full. That was on the basis that the new forms were to be introduced by April 2009. Unfortunately, that proved not to be the case and it was not until October 2009 that the relevant form was amended and became consistent with the Northern Ireland Census categories. While there was a delay in implementation, I am satisfied that those recommendations are now fully implemented.

In accordance with the Policing Board's monitoring arrangements, the PSNI provides the Policing Board with the quarterly reports recording use of police powers to stop and search and stop and question. I analyse those statistics below.

PSNI monitoring of stop and search powers

Table 1 below sets out the number of persons stopped and searched between 1 April 2008 and 31 March 2009 under PACE, TACT and JSA. There were a total of 30,045 stops and searches in 2008/2009 compared to 19,200 in 2007/2008, which represents an overall increase of 56%. In particular, Table 1 indicates a significant increase in the use of the power to stop and search under PACE, s.44 TACT and s.21 JSA. There was a decrease in the use of s.24 JSA.

Table 1: Persons stopped/searched and stopped/questioned under PACE, TACT and JSA, 1 April 2008 to 31 March 2009 across all Districts

Legislative Power	Apr–Jun 2008	Jul–Sep 2008	Oct–Dec 2008	Jan–Mar 2009	Totals	% increase /decrease
PACE	4626 (3616)*	5437 (3818)	5380 (4324)	4568 (3604)	20,011 (15,362)	↑ 30
TACT s.44	1341 (124)	1657 (1112)	2524 (722)	4026 (1400)	9,548 (3358)	↑ 184
JSA s.24**	111 (109)	154 (107)	55 (95)	54 (117)	374 (428)	↓ 13
JSA s.21**	28 (16)	31 (14)	14 (14)	39 (8)	112 (52)	↑ 115

* () Figures in brackets represent figures for the corresponding period in 2007/2008.

** Ss.24 and 21 of JSA replaced ss.84 and 89 of TACT on 31 July 2007. Therefore, throughout this chapter, the figures for ss.24 and 21 of JSA in the 2007/2008 period include figures for ss.84 and 89 of TACT up until 31 July 2007.

District use of PACE, TACT and JSA

Table 2 below sets out the number of persons stopped/searched and stopped/questioned under PACE, TACT and JSA, and the number of persons arrested as a result, by District for the period 1 April 2008 to 31 March 2009. The table reflects a wide variation in the use of the statutory powers across the Districts, however, in each District the amount of people arrested following the use of the powers remain low. Despite there being a sizeable increase (as noted above) in the use of s.21 JSA during the 2008/2009 period, no arrests were made in any District following the use of this power.

Table 2: Number of persons stopped/searched and stopped/questioned under PACE, TACT and JSA, 1 April 2008 to 31 March 2009 by District

District ³⁹	Legislative power to stop/search or stop/question and number of arrests							
	PACE	Arrests	TACT s.44	Arrests	JSA s.24	Arrests	JSA s.21	Arrests
A	2,995	235	1,138	30	54	0	28	0
B	2,890	355	1,894	16	20	0	9	0
C	1,214	105	300	1	6	0	5	0
D	4,518	359	1,754	13	51	0	9	0
E	2,455	184	1,009	8	97	2	5	0
F	2,059	155	610	5	89	4	47	0
G	1,459	140	2,612	17	28	0	7	0
H	2,421	276	231	0	29	0	2	0
Total	20,011	1,809	9,548	90	374	6	112	0

Please Note: Comparative figures for the corresponding period in 2007/2008 have not been included as statistics for Districts were not available for the period 1 April 2007 to 30 September 2007.

As stated above, there has been a considerable increase in the use of the s.44 TACT power to stop and search, with the total number of stops and searches under s.44 increasing by 184% since 2007/08. It is worth noting that the exercise of the power to stop and search engages Article 8 ECHR (right to family and private life). Therefore, the exercise of the power must be lawful, necessary in a democratic society and proportionate to the legitimate purpose sought to be achieved. Whether or not the power is being exercised appropriately can be measured, to some extent, by its effectiveness. The monitoring of the outcome of the stop and search and the extent to which it is used against any particular group must be monitored. This year I will be

³⁹ A - Belfast North and Belfast West; B - Belfast East and Belfast South; C - Ards, Castlereagh, North Down and Down; D - Antrim, Carrickfergus, Lisburn and Newtownabbey; E - Armagh, Banbridge, Craigavon, Newry and Mourne; F - Cookstown, Dungannon and South Tyrone, Fermanagh and Omagh; G - Foyle, Limavady, Magherafelt and Strabane; and H - Ballymena, Ballymoney, Coleraine, Larne and Moyle.

reviewing the statistics in respect of disposal following arrest as a further indicator.

In the 2008 Annual Report, it was recommended 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 TACT and the substantial decrease in the use of police powers under s.84 TACT, now replaced by s.24 JSA, and s.89 TACT, now replaced by s.21 JSA, to ensure that all such powers used are justified, necessary and proportionate.⁴⁰ The PSNI accepted that recommendation and proposed to quantify and analyse the statistical changes, the operational background against which s.44 authorisations were granted and the manner in which the PSNI disseminated information regarding the powers granted by JSA.⁴¹

That analysis was provided⁴² and includes specific consideration of all the matters required by recommendation 15 of the 2008 Annual Report. The analysis makes clear that the substantial increase in the use of the s.44 power commenced in the third quarter of 2007, which appears to have coincided with enhanced training on the powers available to PSNI officers under both TACT and JSA.

I therefore consider recommendation 15 of the 2008 Annual Report to have been implemented in full. Given the level of concern expressed over the increased use of stop and search powers in Northern Ireland, I recommend that the PSNI should keep under review the use of powers to stop and search and stop and question contained within PACE, TACT and JSA. In particular, the PSNI should analyse the statistics and report to the Policing Board on an annual basis to ensure that all such powers used are justified, necessary and proportionate.

⁴⁰ Recommendation 15, 2008 Human Rights Annual Report, p.59.

⁴¹ Human Rights Programme of Action 2008-2009, p.15.

⁴² By letter to the Policing Board dated 5 June 2009.

Recommendation 9

The PSNI should analyse its figures for stop and search and stop and question under the Police and Criminal Evidence (Northern Ireland) Order 1989, the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007, considering in particular whether the powers used are justified, necessary and proportionate. The first analysis should be presented to the Policing Board in the 3rd financial quarter of the year and thereafter on an annual basis.

Gender and Ethnic Profiles of those stopped and searched

Tables 3 and 4 below set out the number of persons stopped under PACE, TACT and JSA by gender and ethnicity respectively for the period 1 April 2008 to 31 March 2009.

Table 3: Persons stopped/searched and stopped/questioned under PACE, TACT and JSA by gender, 1 April 2008 to 31 March 2009

	Stop/search and stop/question			
	PACE	TACT s.44	JSA s.24	JSA s.21
Male	18,254 (13,942)*	8,912 (2,972) ⁴³	314 (386)	103 (48)
Female	1,757 (1,420)	636 (262)	60 (42)	9 (4)

* () Figures in brackets represent figures for the corresponding period in 2007/2008.

⁴³ There were an additional 124 people stopped and searched under s44 TACT in the 2007/2008 period for whom the gender was not recorded.

Table 4: Persons stopped/searched and stopped/questioned under PACE, TACT and JSA by ethnicity, 1 April 2008 to 31 March 2009

	Statutory power to stop/search or stop/question											
	PACE				TACT s.44				JSA ss. 21 & 24			
	Total Stop / Searches	% of total	Arrests	% of searches leading to arrest	Total Stop / Searches	% of total	Arrests	% of searches leading to arrest	Total Stop / Searches	% of total	Arrests	% of searches leading to arrest
Wh.	19,456	97.2	1,741	9	9,450	99.0	90	1.0	485	99.8	6	1.2
Ch.	78	0.4	22	28	27	0.3	0	0	0	0	0	0
I/S	63	0.3	2	3	20	0.2	0	0	1	0.2	0	0
Tra.	123	0.6	19	15	17	0.2	0	0	0	0	0	0
Bl.	70	0.3	13	19	9	0.1	0	0	0	0	0	0
Oth.	221	1.1	12	5	25	0.3	0	0	0	0	0	0
Total	20,011	100	1,809	9	9,548	100	90	0.9	486	100	6	1.2

Please Note: Comparative figures for the corresponding period in 2007/2008 have not been included as statistics for s.44 TACT were not available, and the only statistics available for arrests were for PACE arrests from 1 October 2007 onwards.

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

In 2011, updated Census information will be available to give a clearer picture of the ethnic breakdown of members of the community. With publication of that information, together with the PSNI's introduction this year of its new classification system for stop and search, it will be possible to carry out an accurate analysis of whether, and if so how, the use of stop and search powers is disproportionate.

Table 5 sets out the number of stops and searches under PACE which led to arrest according to the reason for the search for the period 1 April 2008 to 31 March 2009. Such analysis further assists to determine whether the use of stop and search powers is disproportionate and/or discriminatory.

The forthcoming review of stop and search, which will be carried out by the Policing Board over the coming months, will consider the statistics on the use of police powers to stop and search and stop and question in greater detail.

Table 5: Number of persons stopped/searched, and subsequently arrested, under PACE by reason for search, 1 April 2008 to 31 March 2009

	1 Apr – 30 Jun			1 Jul – 30 Sep			1 Oct – 31 Dec			1 Jan – 31 Mar		
	Searches	Arrests	%									
Stolen property	550	76	14	585	94	16	587	102	17	594	104	18
Drugs	2,492	176	7	2,917	202	7	2,546	158	6	2,271	159	7
Firearms etc.	60	6	10	72	4	6	83	9	11	51	5	10
Offensive Weapon	338	42	12	472	72	15	456	73	16	296	42	14
Going equipped	774	52	7	924	73	8	1000	109	11	922	50	5
Other	625	87	14	669	73	11	972	63	6	583	67	11
Not specified	0	0	0	7	0	0	0	0	0	32	3	9
Total persons*	4,626	415	9	5,437	492	9	5,380	487	9	4,568	415	9
Total persons* 2007/2008	3,616	295	8	3,818	359	9	4,324	395	9	3,604	355	10

* The PSNI do not currently record this information for stops and searches under TACT.

** 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.

CHAPTER 5: CODE OF ETHICS

The PSNI Code of Ethics is based upon international human rights standards and provides an ethical framework for the decisions, actions and conduct of all PSNI officers.

Under the Police (Northern Ireland) Act 2000, the Policing Board is required to assess the effectiveness of the Code of Ethics¹ and has the power to revise it from time to time.² A review of the Code, originally published in February 2003, was conducted by the Policing Board in 2006/2007. The 2008 Human Rights Annual Report (the Annual Report) detailed the work of the Policing Board, and in particular the Code of Ethics working group, in consulting with key stakeholders, including PSNI officers, before producing the revised Code.³ The Policing Board formally launched the new Code of Ethics on 6 February 2008.

EVIDENCE OF THE EFFECTIVENESS OF THE CODE

The Code of Ethics is an important tool to ensure that the PSNI complies with its obligations under the Human Rights Act 1998. Any breach may give rise to a disciplinary investigation. 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 retained of the steps taken in relation to each officer.⁴ The 2008 Annual Report outlined a number of initiatives introduced by the PSNI to ensure awareness and understanding of the new Code of Ethics and the internal mechanisms put in place to ensure the effectiveness of the Code.⁵

It was recommended in the 2007 Annual Report that the PSNI should ensure that all new policies, procedures and guidance include relevant references to

¹ Police (Northern Ireland) Act 2000, s.3(3)(d)(iv).

² *Ibid.*, s.52.

³ 2008 Human Rights Annual Report, chapter 5, pp.67 – 68.

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

⁵ 2008 Human Rights Annual Report, chapter 5, pp. 68 – 70.

the Code of Ethics as a matter of standard practice.⁶ This was considered to be implemented in full in the 2008 Annual Report on the basis of the PSNI policy audit tool, which now requires drafters and reviewers to indicate whether the Code of Ethics has been considered in the creation or revision of the policy. This strengthens further the incorporation of the Code within the policy audit process. A new Service Procedure was issued by the PSNI on 16 October 2009, which expressly states that Departmental Heads, District Commanders and Branch Heads must ensure that any 'local procedures', 'guidance' or 'standing orders' are compliant with the Code of Ethics.⁷

ENFORCING THE CODE OF ETHICS

Alleged breaches of the Code⁸

Since 2005/2006, the number of alleged breaches of the Code of Ethics has increased steadily. The number of allegations has increased from 512 allegations in 2007/2008 to 633 in 2008/2009, which is a 24% increase. The percentage of alleged breaches transferred from the Police Ombudsman has also risen annually from 23% of all alleged breaches during 2005/2006 to 55% during 2008/2009.

The Articles most commonly alleged to have been breached this year, and every year since 2005/2006, were Article 1 (professional duty), Article 2 (Police Investigation) and Article 7 (Integrity). The sub-Articles of the Code most commonly alleged to have been breached were sub-Article 7.2⁹, sub-Article 1.10,¹⁰ sub-Article 1.5,¹¹ and sub-Article 2.2.¹² This trend has been repeated since 2005/2006.

⁶ Recommendation 14, 2007 Human Rights Annual Report, p.78.

⁷ Service Procedure 32/2009, Policy Directives and Service Procedures, 16 October 2009, which cancelled Policy Directive 01/04, PSNI Policy, Procedure and Guidance.

⁸ Statistics as per PSNI Analysis 2008.

⁹ 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.

¹⁰ 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.

¹¹ 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

Table 1 below sets out the number of alleged breaches for each of these Articles of the Code of Ethics for 2007/2008 and 2008/2009 respectively.

Table 1: Most commonly alleged breaches of the Code of Ethics, 1 April 2008 to 31 March 2009

Code of Ethics Article	Alleged breaches 2007/2008	Alleged breaches 2008/2009	% change
7.2 (Duty to obey the law and maintain standards of the code)	90	74	- 18%
2.2 (Duty to conduct investigations in an objective, fair and thorough manner)	68	65	-4%
1.10 (Duty not to discredit the PSNI on or off duty)	79	64	-19%
1.5 (Duty to obey all lawful orders)	66	53	-20%
Others	209	377	+ 80%
Total	512	633	+ 24%

Sub-Article 7.2 accounts for 80% of all Article 7 alleged breaches in the last 4 years. Those cases pre-dominantly involve officers who have been referred for criminal offences. However, this number has declined annually from 37% of all alleged breaches in 2005/2006 to only 12% during 2008/2009.

The second highest level of alleged breaches for 2008/2009 has been sub-Article 2.2, which typically involves failure to investigate an incident. This sub-Article accounted for 10% of all alleged breaches in 2008/2009.

The third highest level of alleged breaches for 2008/2009 was sub-Article 1.10. This sub-Article often applies to off-duty conduct whilst many of the

¹² 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.
 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.

other sub-Articles refer only to on-duty conduct.¹³ Breaches of this sub-Article have fallen from 15% of all alleged breaches in 2007/2008 to 10% of all alleged breaches in 2008/2009.

The fourth highest level of alleged breaches during 2008/2009 was sub-Article 1.5 with neglect of duty being the category with the highest level. Of 53 alleged breaches of this sub-Article, neglect of duty accounted for 32 of the allegations (60%). Most allegations in this category typically relate to failure to investigate, which is similar to the pattern in 2007/2008. Use of firearms accounted for 6 (11%) of the 53 alleged breaches.¹⁴ This is a decrease from 2007/2008 where firearms accounted for 9 of the allegations (14%) of the 66 alleged breaches.

¹³ As per PSNI Discipline Unit's advice to PSNI Professional Standards Department – email PSNI Professional Standards Department to Policing Board, 15 December 2009.

¹⁴ It can be noted that a case will often relate both to sub-Articles 2.2 & 1.5. For example, if a supervisor has given a direction relating to an investigation, which an officer then fails to carry out, not only will they have failed to conduct a thorough investigation, but also breach the lawful order given by the supervisor.

Investigations commenced by PSNI Professional Standards Department

Table 2 below sets out the number of investigations and preliminary inquiries initiated by PSNI Professional Standards Department in 2007/2008 and 2008/2009 by Article of the Code of Ethics.¹⁵

Table 2: Investigations and preliminary inquiries initiated by PSNI Professional Standards Department, 1 April 2008 to 31 March 2009

Article of the Code of Ethics Article	Number of initiated investigations	
	2007/2008	2008/2009
1 (Professional duty)	78	67
2 (Police investigations)	13	10
3 (Privacy/confidentiality)	14	12
4 (Use of force)	5	4
5 (Detained persons)	0	0
6 (Equality)	6	4
7 (Integrity)	118	111
8 (Property)	11	9
9 (Fitness for duty)	5	1
10 (Duty of supervisors)	0	1
Other¹⁶	14	54
Total	264	273

As Table 2 demonstrates, there were 273 initial investigations commenced in 2008/2009, as compared with 264 commenced in 2007/2008. The largest number of investigations commenced in 2007/2008 related to breaches of Article 1 (Professional Duty) and 7 (Integrity) and this trend has continued in 2008/2009.¹⁷

¹⁵ Statistics supplied by PSNI, discharging its continuing obligation under Recommendation 27(e) of the 2005 Human Rights Annual Report. These figures include preliminary inquiries which may not result in a full investigation.

¹⁶ Other cases are those where it was decided that there were no relevant Articles of the Code of Ethics applicable to the circumstances of the case.

¹⁷ A further breakdown of the sub-categories of breach, within each Article allegedly breached, is contained later in chapter 6 (Complaints, Discipline and Civil Actions).

Results of investigations of alleged breaches¹⁸

During the period 1 April 2008 to 31 March 2009, there were 595 misconduct investigations completed.¹⁹ In 141 of these cases (24%) no further action was taken. In 17 cases (3%) the officer involved resigned prior to an outcome being reached and similarly one officer retired prior to an outcome being reached. The remaining 436 completed investigations (73%) resulted in a formal or informal sanction being made. This compares with 250 out of 434 misconduct cases (58%) resulting in a formal or informal sanction in 2007/2008.

Formal sanctions are imposed by a misconduct panel and include:

1. Dismissal from the PSNI;
2. A requirement to resign;
3. A reduction in rank or pay;
4. A fine;
5. A reprimand; and
6. A caution.

An informal sanction is imposed at local level, normally by the Discipline Champion, who is a Superintendent having responsibility for discipline issues within the relevant District or Department. A recommendation for local misconduct action may originate as a result of a Professional Standards Department or Police Ombudsman investigation.

Informal sanctions include:

1. A Superintendents' Written Warning;
2. Advice and Guidance; and
3. Management discussion.

¹⁸ Statistics supplied by PSNI, discharging its continuing obligation under Recommendation 27(e) of the 2005 Human Rights Annual Report.

¹⁹ Completed investigations are those investigations completed by PSNI Professional Standards in 2008/2009, but not necessarily commenced in the same period.

A breakdown of the types of formal and informal sanctions imposed in the 436 completed misconduct investigations during 2008/2009 is included in chapter 6 (Complaints, Discipline and Civil Actions).²⁰

It was recommended in the 2008 Annual Report 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 nature of the misconduct causing the breaches and the disciplinary action taken by the PSNI in relation to the breaches.²¹ On that basis, I am satisfied that recommendation 16 of the 2008 Annual Report has been implemented in full. I remind the PSNI that recommendation 16 is intended as a continuing obligation.

²⁰ Chapter 6, Table 10.

²¹ Recommendation 16, 2008 Human Rights Annual Report, p.74.

CHAPTER 6: COMPLAINTS, DISCIPLINE AND CIVIL ACTIONS

The analysis of complaints, discipline and civil actions against the police provides important information for monitoring the PSNI's compliance with the Human Rights Act 1998. Both the number and content of such complaints are an effective measure of the relationship between the police and the community and the efficacy of police policy and practice. Only by achieving high standards of discipline based upon honesty, integrity and transparency will a police service earn the confidence and support of the community. Without that confidence and support, all other aspects of policing are undermined. Accordingly, I reiterate that the analysis of the information provided by PSNI Professional Standards Department (PSD), which remains a critical function of the Policing Board, should be considered, where appropriate, for incorporation into training and policy review.¹

The PSNI provides me, as the Policing Board's Human Rights Advisor, with summary details of all cases that resulted in formal disciplinary hearings; details of all conduct leading to Superintendent's Written Warnings; details of cases where disciplinary proceedings are not commenced or not concluded because the officer in question retires, resigns or otherwise leaves the PSNI; details of PSNI Professional Standards Department's current misconduct investigations and disciplinary action taken as a result of completed investigations; details of any action taken by District Commanders under the PSNI tracking and trending policy; details of all civil actions taken against the police; and, details of judicial review cases brought against the PSNI and any action taken in response to adverse decisions.²

The PSNI has provided that information on a regular basis and accepts that it is a continuing obligation. I also receive details of the number of officers against whom there has been three or more complaints in a rolling 12 month period from the Office of the Police Ombudsman. In this year's Annual Report, I have drawn on the information provided by PSNI Professional Standards

¹ This is considered further at chapter 2 (Training).

² In compliance with recommendation 27 of the 2005 Annual Report, p.170.

Department (PSD), 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.

NUMBER AND PATTERN OF COMPLAINTS

In the period 2008/09, 3,081 complaints were made against the police, which represented a 3% increase from 2007/2008 when 2,994 complaints were made.³ Of the 3,081 complaints received and registered in 2008/09, 1,619 (53%) were referred for formal investigation⁴ and the remaining 1,462 (47%) were dealt with by the Complaints Office.⁵ 30% of complaints in 2008/09 related to the manner in which police conducted criminal investigations, 20% related to arrest and 12% related to traffic incidents.⁶

The number of allegations, however, showed an overall decrease of 2% to 5,296 allegations in 2008/09.⁷ There was also a significant decrease in the percentage of allegations relating to oppressive behaviour. In 2008/09, 29% of complaints related to oppressive behaviour (covering allegations such as assault, intimidation or harassment) as compared to 34% in 2007/08.⁸ Allegations relating to failure in duty showed a decrease of 3% in 2008/09 making up 38% of the total allegations, in contrast with 41% in 2007/08.⁹

This is a welcome development and may reflect the concentrated effort of the PSNI, through training and management, to ensure that officers understand and appreciate the importance of adherence to the Code of Ethics. Allegations of incivility have remained static from 2007/08 making up 14% of the overall total in 2008/09.¹⁰ It is hoped that such allegations will follow the

³ Police Ombudsman Annual Report and Accounts for the year ended 31 March 2009, p.18.

⁴ Pursuant to s.56 of the Police (Northern Ireland) Act 1998. Police Ombudsman Annual Report 2009, p.21.

⁵ Police Ombudsman Annual Report 2009, p.21.

⁶ *Ibid.*, p.36.

⁷ *Ibid.*, p.18.

⁸ *Ibid.*, p.31.

⁹ *Ibid.*, p.31.

¹⁰ *Ibid.*, p.31.

trend of other allegations and show a reduction over the next 12 months. I will discuss with PSNI Professional Standards Department and the Police Ombudsman their views on the reason for, and solution to, the high number of complaints of incivility. Over the course of this year's monitoring I have had several meetings with senior officers in PSNI PSD and have been impressed by their commitment to improving discipline and embedding human rights principles and the Code of Ethics within PSNI culture and practice.

The allegations made during the period 1 April 2008 to 31 March 2009, as classified by the Police Ombudsman, are set out in Table 1 below.¹¹

Table 1: Allegations against the PSNI, 1 April 2008 to 31 March 2009.

Allegation type	Allegation sub-type	Total
Discriminatory Behaviour	Disability discriminatory behaviour	0
	Homophobic discriminatory behaviour	8
	Other discriminatory behaviour	2
	Other religious discriminatory behaviour	0
	Racial discriminatory behaviour	29
	Sectarian discriminatory behaviour	25
	Trans-phobic discriminatory behaviour	0
	Sub-total	64 (1%)
Failure in duty	Failures in duty	650
	Failure to investigate	233
	Failure to update	139
	Other irregularity in procedure	34
	Stop and search	11
	Conduct of police investigation	232
	Detention, treatment and questioning	101
	Identification procedures	13
	Improper disclosure of information	45
	Other failures in duty	497
	Procedural Irregularity	45
	Tape recording	0
	Denied access to medical attention	15
	Denied access to legal advice	3
	Sub-total	2,018 (38%)

¹¹ *Ibid.*, pp.32-33.

Allegation type	Allegation sub-type	Total
Incivility	Incivility	283
	Incivility at domestic residence	102
	Incivility at police station	58
	Incivility by officer on the telephone	61
	Incivility when stopped for a traffic offence	60
	Incivility to person under 18 years	5
	Other Incivility	169
	Sub-total	738 (14%)
Malpractice	Corrupt practice	43
	Irregularity in relation to evidence/perjury	86
	Sub-total	129 (2%)
Mishandling of property	Mishandling of property	34
	Sub-total	34 (1%)
Oppressive behaviour	Oppressive conduct or harassment	265
	Assault (non serious)	0
	Oppressive conduct (OC not involving assault)	304
	Harassment (series of like incidents)	81
	Serious assault involving fatality	0
	Serious non-sexual assault	36
	Sexual assault	23
	Other assault	850
	Sub-total	1,559 (29%)
	Other	Other
Other allegation		115
Other-insufficient detail		44
OPONI Call in/out NFA		5
Sub-total		293 (6%)
Search	Search of premises and seizure of property	50
	Damage to property	8
	Irregularity re- Search of premises	62
	Irregularity re- Stop/Search of person	32
	Irregularity re Stop/Search of vehicle	3
	Seizure of property	24
	Sub-total	179 (3%)
Section 55 Referral	Section 55 (Chief Constable Referral)	22
	Section 55 (HET Referral)	3
	Section 55 (Police Ombudsman Call in)	10
	Section 55 (Policing Board Referral)	0
	Section 55 (PPS Referral)	4
	Section 55 (Secretary of State Referral)	0
Sub-total	39 (1%)	

Allegation type	Allegation sub-type	Total
Traffic	Traffic irregularity	38
	Other traffic irregularity	6
	Driving of police vehicles	31
	Sub-total	75 (1%)
Unlawful/Unnecessary Arrest/Detention	Unlawful/Unnecessary Arrest/Detention	168
	Sub-total	168 (3%)
	Total 2008/2009	5,296
	Total 2007/2008	5,412

Please Note: Figures have been rounded to nearest percentage point.

COMPLAINT OUTCOMES 2008/09

A total number of 3,286 complaints were closed during 2008/09, which is an 8% increase on the 3,049 complaints closed by the Police Ombudsman in 2007/08.¹² The Police Ombudsman's Office replaced its complaints based management recording system on 1 December 2008. Of the complaints closed following investigation between April 1 and 30 November 2008, 74% were closed on the grounds they were not substantiated due to insufficient evidence. 22% were closed with a specific action recommended and 4% were closed as substantiated, but without recommendation of a specific action.¹³

The Police Ombudsman has adopted a new system, which is allegation based. Accordingly, it is now possible to record and report on outcomes and recommendations made against each allegation. The new system provides a more comprehensive analysis of police conduct.¹⁴ From 1 December 2008 to 31 March 2009, 75% of allegations closed following investigation were not substantiated, 9% were closed following referral to the Public Prosecution Service (PPS) and the remainder were closed with either a specific action recommended or as substantiated with no action recommended.¹⁵

¹² *Ibid.*, p.21.

¹³ *Ibid.*, p.22.

¹⁴ *Ibid.*, p. 22.

¹⁵ *Ibid.*, p.22.

Formal disciplinary action

If any case which is being investigated by the Police Ombudsman indicates that a criminal offence may have been committed by a police officer, a file must be submitted to the Director of Public Prosecutions.¹⁶ The file is then sent to the Public Prosecution Service. In 2008/09 the Police Ombudsman referred 272 cases to the PPS. In 261 of those cases, the Police Ombudsman recommended no prosecution. In 11 cases, the Police Ombudsman recommended prosecution.¹⁷ Table 2 below sets out the number of files submitted by the Police Ombudsman to the PPS against recommendations made between April 2006 and March 2009. The table demonstrates that the total number of cases referred to the PPS has increased in 2008/09. The number of recommendations to prosecute has remained stable at a total of eleven cases but the number of charges recommended has declined for the third year running (although the number of officers to whom the charges relate remains relatively constant).

¹⁶ Police (Northern Ireland) Act 1998, s.58. PSNI Professional Standards Department also conduct investigations into suspected criminal wrongdoing by officers.

¹⁷ Police Ombudsman Annual Report 2009, p.23.

Table 2: Cases referred to the Public Prosecution Service by the Police Ombudsman, 2006-2009

Outcomes	2006/2007	2007/2008	2008/2009
Files submitted to PPS	200	241	272
PONI recommendation to prosecute	11	11	11
Number of charges recommended	22 ¹⁸	19 ¹⁹	13 ²⁰
PONI recommendation of PSNI formal disciplinary action	8 ²¹	11 ²²	11 ²³

Informal disciplinary action

The Police Ombudsman may also recommend informal disciplinary action. Those recommendations are directed to the Chief Constable and progressed by local management via PSNI Professional Standards Department. Table 3 sets out recommendations by the Police Ombudsman for informal disciplinary action between April 2006 and March 2009. It can be seen that there is a significant decrease in the number of allegations recommended to be dealt with by way of management discussion and a significant increase in the number of allegations recommended to be dealt with by way of Advice and Guidance. The number of recommendations for Superintendents' Written Warnings has remained stable.

Table 3: Police Ombudsman recommendations for informal disciplinary action, 2006-2009.

Outcomes	2006-2007	2007/2008	2008-2009
Management discussion	29 ²⁴	38 ²⁵	18 ²⁶
Advice and guidance	65 ²⁷	86 ²⁸	188 ²⁹
Superintendent's Written Warning	21 ³⁰	23 ³¹	20 ³²

¹⁸ Involving 13 officers and 22 charges.

¹⁹ Involving 12 officers and 19 charges.

²⁰ Involving 12 officers and 13 charges.

²¹ Involving 9 officers.

²² Involving 16 officers.

²³ Involving 15 officers.

²⁴ Involving 24 officers.

²⁵ Involving 48 officers.

²⁶ Involving 22 officers.

²⁷ Involving 64 officers.

²⁸ Involving 111 officers.

²⁹ Involving 246 officers.

Informal resolution

In 2008/2009, 25% of all complaints (753) were considered suitable for informal resolution, and of these, 493 complainants agreed to participate in the process. A total of 514 files referred for informal resolution were closed during the year. 362 complaints (71%) were successfully informally resolved. In 141 cases (27%), informal resolution was not successful and the complaints were referred for investigation. 11 complaints were withdrawn upon commencement of informal resolution amounting to 2% of the overall figure.³³

COMPLAINTS AGAINST SENIOR OFFICERS

The Conduct of Senior Officers Regulations 2000,³⁴ require that complaints against officers of Assistant Chief Constable and above are referred to the Policing Board. During 2008/09, there were no complaints against a senior officer compared to 2007/08 when four complaints were made against a senior officer. Clearly, that is a significant improvement on previous years.

DIRECTION AND CONTROL COMPLAINTS

Direction and control complaints relate to the delivery of police services. They include, for example, operational policies, organisational decisions, general policing standards and operational management decisions. PSNI Professional Standards Department has responsibility for discharging the Chief Constable's duty in relation to direction and control complaints. Professional Standards Department publishes lessons learnt from any such complaint and submits a bi-annual report to the Policing Board. It is worth highlighting how important it is that lessons are learnt from that analysis; it is that element of the review which is fundamental to this process and which is aimed at improving the delivery of a police service to the whole community.

³⁰ Involving 23 officers.

³¹ Involving 25 officers.

³² Involving 23 officers.

³³ Police Ombudsman Annual Report 2009 p.27

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

Between 1 April 2008 and 31 March 2009, the PSNI received 113 direction and control complaints. Whilst there has been an increase in the number of direction and control complaints since 2007/08, when 82 complaints were received, all 113 complaints have been finalised. The usual way of dealing with the complaints is for an officer at inspector level to discuss the issue with the complainant, write a letter explaining police policy and procedure or issue an apology where appropriate.³⁵ I will continue to monitor the statistics and, in particular, will analyse further whether the increase is attributable to any factor(s).

³⁵ PSNI Professional Standards Activity Report, April 2008 to March 2009.

FORMAL DISCIPLINARY HEARINGS

The PSNI Professional Standards Department provides me with summary details of all cases that resulted in a formal disciplinary hearing.³⁶ That information is analysed for the period 1 April 2008 to 31 March 2009 in Table 4 below.

Table 4: Cases resulting in formal disciplinary proceedings, 1 April 2008 to 31 March 2009

Date	Type of Allegation ³⁷	Detail	Outcome
17/04/08	Integrity/ Privacy & Confidentiality	Knowingly or recklessly disclosed personal data contrary to data Protection Act/Use of police system for personal benefit ³⁸	Reduction in salary
30/04/08	Integrity	Data protection issue	Reprimand
08/05/08	Fitness for duty (x4)/ Integrity/ Professional duty	Failure to attend commitments/Failure to support colleagues	Reduction in salary/ Fined (x3)
12/05/08	Integrity/ Breach of duty	Theft from colleague/discredit to the police service	Dismissed (x2)
22/05/08	Equality	Inappropriate behaviour towards a colleague	Fined £500
26/06/08	Integrity	Common assault	Caution
04/07/08	Integrity	Excess alcohol	Required to resign
04/07/08	Integrity	Excess alcohol	Required to resign
08/07/08	Professional Duty/ Duty of Supervisors	Failure to accurately complete custody record/ Failure to support and give guidance to colleague	Caution (x2)
12/08/08	Police investigation (x20)	Failure to properly investigate and to take necessary action	Required to resign (x6)/ Reprimand (x14)

³⁶ Discharging its continuing obligation under recommendation 27(a) of the 2005 Human Rights Annual Report, p.170.

³⁷ Each date corresponds to 1 hearing for 1 officer. Multiple sanctions reflect multiple charges.

³⁸ The breaches of DPA occurred in previous reporting period but dealt with in this reporting period hence there are no breaches committed in the current period, as referred to in chapter 14.

Date	Type of Allegation	Detail	Outcome
28/08/08	Integrity	Failure to support colleagues during public order operation	Fined £600
31/08/08	Integrity (x2)/ Professional duty	Two convictions for dishonesty/ discredit to the police service	Required to resign/ Reprimand
10/09/08	Equality/ Detained persons	Inappropriate language and behaviour towards detained person	Advice and Guidance/ Caution
10/09/08	Equality/ Detained persons	Inappropriate language and behaviour towards detained person	Fine £500/ Caution
12/09/08	Integrity	Data protection issue	Caution
23/09/08	Integrity/ Fitness for duty	Possession of firearm whilst under influence of alcohol	Fined £400
03/11/08	Professional Duty	Officer had knowledge of, and failed to act upon, the illegal immigration status of a person	Fined £500
27/01/09	Integrity	Officer failed to disclose a business interest when applying for a career break	Required to resign.
25/03/09	Professional Duty (x2)/ Equality/ Duty of Supervisors	Officer misusing police phone line/ Display of inappropriate images on computer whilst on duty/Display of images and images observed by other officers under officer's supervision	Reduction in pay/ Fined £1000/ Reprimand
20/03/09	Investigative and duty failure (x4)	Officer failed to conduct a thorough investigation into an assault	Reprimand/ Fined total of £100
14/05/08	Professional Duty (x2)	Officer dishonestly copying information for internal job application	Fined £450/ Reduction in salary
14/05/08	Professional Duty (x2)	Officer dishonestly copying information for internal job application	Fined £350/ Reduction in salary
04/08/08	Professional Duty (x2)	Failure to take appropriate action re criminal offences and failure to assist with investigation	Caution (x2)
05/08/08	Professional Duty (x2)	Inappropriate use of internet whilst on duty	Reduction in pay
27/08/08	Professional Duty	Failure to take appropriate steps to secure safety of member of public	Reprimand
27/08/08	Professional Duty	Failure to take appropriate steps to secure safety of member of public	Caution
30/08/08	Professional Duty (x2)	Theft	Dismissed (x2)

Date	Type of Allegation	Detail	Outcome
07/11/08	Professional Duty (x2)	Officer failed to use official accommodation/ Inappropriate behaviour towards a member of staff	Fined £148
09/10/08	Professional Duty	Officer in possession of Class A drugs and other misuse paraphernalia	Required to resign
10/12/08	Privacy and Confidentiality	Officer disclosed confidential information to a member of the public	Fined £250
18/11/08	Equality	Officer used inappropriate language to a member of the public	Fined £100
17/10/08	Integrity	Data protection matters	Reprimand
24/10/08	Integrity	Officer's criminal conviction for theft of fuel from a police establishment	Required to resign
07/01/09	Integrity	Officer convicted for breaching Data Protection legislation	Caution
23/01/09	Integrity	Officer convicted for unlawful possession of a Class C drug	Required to resign
13/10/08	Professional Duty (x2)/Integrity	Officer conducted business interest without approval and became bankrupt/ Failed to act with integrity whilst giving evidence under oath	Reduction in salary/ Fined £1200
26/01/09	Integrity (x3)	Officer giving false information during internal selection process	Fined £200

SUPERINTENDENTS' WRITTEN WARNINGS

A Superintendents' Written Warning (SWW) is the maximum disciplinary sanction that can be imposed on officers at District level. If an officer does not accept a SWW, the case is referred to PSNI Professional Standards Department to investigate and a full disciplinary hearing may take place. If an officer admits the alleged misconduct, accepts the SWW and no further misconduct is recorded in relation to the officer in the subsequent 12 months, the SWW is deleted from the officer's personal record.

The PSNI provides me with details of all SWWs issued to officers.³⁹ During the period 1 April 2008 to 31 March 2009, 138 SWWs were issued. This is an increase of 34% from the comparable period last year.⁴⁰

Table 5: Superintendents' Written Warnings according to the relevant Article of the PSNI Code of Ethics breached

Article of Code of Ethics	SWW given 2007/2008	SWW given 2008/2009
1.1	3	12
1.2	0	1
1.3	2	1
1.4	0	1
1.5	17	18
1.9	4	6
1.10	15	5
2.1*	4	31
2.2*	19	1
2.3*	0	2
3.1	6	2
3.2	1	0
3.3	3	3
3.4	1	2
4.1	0	1
4.3	0	1
4.4	1	7
5.3	0	1
6.1	1	5
7.1	2	8
7.2	11	11
7.4	1	0
7.5	1	4
8.1	5	11
9.1	3	0
9.3	0	1
10.1	0	1
10.2	3	1
10.3	0	1
Total	103	138

Please Note: Sub-Articles within Article 2 cannot be directly compared this year with previous years – footnote 41 refers.

³⁹ Discharging its continuing obligation under recommendation 27(b) of the 2005 Human Rights Annual Report, p.170.

⁴⁰ There were 103 SWWs in the 2008 Human Rights Annual Report, chapter 6, p.89

Table 5 demonstrates a slight change to the trend seen over the course of the 2005 to 2008 period. Previously, two sub-Articles of the Code of Ethics were most regularly the subject of SWWs: sub-Article 2.2 (the duty to conduct investigations in a fair and thorough manner); and, sub-Article 1.5 (the duty to obey all lawful orders and refrain from carrying out unlawful orders). This year, the sub-Articles of the Code of Ethics most regularly the subject of SWWs were: 1.1 (the duty to protect life and property, preserve order, prevent commission of offences and bring offenders to justice); 1.5 (the duty to obey all lawful orders and refrain from carrying out unlawful orders); and, 2.1 (the duty to conduct investigations in a thorough, fair and impartial manner).⁴¹ There has also been an increase in the number of SWWs given for breaches of sub-Article 8.1 (handling of property according to law).

In the 2007 Annual Report, it was recommended that the PSNI should investigate the behaviour or conduct resulting in the high number of SWWs for breaches of sub-Articles 1.5 and 2.2.⁴² The PSNI has provided that analysis, complying with recommendation 15 of the 2007 Annual Report.⁴³ Given the significant increase in breaches of sub-Articles 1.1 and 2.1 and the continuing trend in relation to breaches of sub-Article 1.5, I recommend that the PSNI should investigate the behaviour or conduct resulting in the high number of Superintendents' Written Warnings under sub-Articles 1.1, 1.5 and 2.1 of the Code of Ethics and report to the Policing Board with its findings within six months of the publication of this report. Thereafter, the Policing Board will consider whether further recommendations are required.

⁴¹ Since the PSNI Code of Ethics was reissued in February 2008, the sub-Articles in Article 2 do not follow the same numbering as they did in previous versions of the Code, for example, sub-Article 2.1 of the Old Code (treatment & updating of victims) is now reflected in sub-Article 2.3 of the revised Code, sub-Article 2.2 of the old Code (the duty to conduct investigations in a fair and thorough manner and the presumption of innocence) is now reflected in sub-Articles 2.1 (the duty to conduct investigations in a fair and thorough manner) and 2.2 (presumption of innocence) of the revised Code, and sub-Article 2.3 (special needs of witnesses & protection measures) is now reflected in sub-Article 2.4 of the revised Code.

⁴² Recommendation 15, 2007 Human Rights Annual Report, p.91.

⁴³ Giving the category of conduct and outcome.

Recommendation 10

The PSNI should investigate the behaviour or conduct resulting in the high number of Superintendents' Written Warnings under sub-Articles 1.1 (the duty to protect life and property, preserve order, prevent commission of offences and bring offenders to justice), 1.5 (the duty to obey all lawful orders and refrain from carrying out unlawful orders) and 2.1 (the duty to conduct investigations in a thorough, fair and impartial manner), of the Code of Ethics and report to the Policing Board with its findings within six months of the publication of this report.

There has been a concern expressed, acknowledged by PSNI, that some officers do not consider the sanction of Superintendent's Written Warning as serious or significant. In light of that, PSNI Professional Standards Department has conducted a review of the system and is in the process of releasing a new policy.⁴⁴ I have reviewed a draft revised Service Procedure. Importantly, the document recognises that local misconduct decision-making should be consistent and robust. It is proposed that all decision-making, including SWWs, will be considered at the Discipline Champions' Forum. I will monitor the application of the policy and report further in next year's Annual Report.

TRENDING AND TRACKING OF COMPLAINTS

The PSNI has adopted a trending and tracking policy.⁴⁵ The Police Ombudsman provides a regular update to District Commanders on the number of allegations of misconduct occurring in their District. Each District Commander decides how best to use the information to reduce complaints 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

⁴⁴ Although I am advised this is dependant on the Northern Ireland Office amending its Guidance on Misconduct Procedures.

⁴⁵ Policy Directive 04/09 Policies & Procedures relating to the Police Ombudsman, 31 March 2009.

decides on an appropriate course of action, taking into account the policing environment and the nature of the officer's duties.⁴⁶

Table 6: Officers with three or more complaints, 1 April 2008 to 31 March 2009

Name of DCU ⁴⁷	No of Complaints								Total no of complaints	Total officers
	3	4	5	6	7	8	9	10		
A District	25	10	7	1	2	2	1	1	205	49
B District	11	13	4	3	1				130	32
C District	23	9	5	2					142	39
D District	22	6		1					96	29
E District	20	13	4		1	1			147	39
F District	17		1	1					62	19
G District	15	6	3						84	24
H District	30	9	5	1			1		166	46
Total 2008/2009	163	66	29	9	4	3	2	1	1,032 (942)⁴⁸	277

It can be seen from the table above that there has been a further increase in the total number of complaints against officers with three or more complaints. In the 2008 Annual Report, it was recommended that 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

⁴⁶ Options may include welfare referral; monitoring by supervisors; guidance or advice on the Code of Ethics and standards expected of the PSNI when dealing with members of the public; training; or no further action. PSNI Professional Standards Department is informed of the course of action taken. The information is then redacted to remove personal identification information and forms part of a six monthly report to the Policing Board - Policy Directive 04/09, section 7, para. 123(f).

⁴⁷ A - Belfast North and Belfast West; B - Belfast East and Belfast South; C - Ards, Castlereagh, North Down and Down; D - Antrim, Carrickfergus, Lisburn and Newtownabbey; E - Armagh, Banbridge, Craigavon, Newry and Mourne; F - Cookstown, Dungannon and South Tyrone, Fermanagh and Omagh; G - Foyle, Limavady, Magherafelt and Strabane; and H - Ballymena, Ballymoney, Coleraine, Larne and Moyle.

⁴⁸ Total number of complaints in 2007/08.

provide that analysis to the Policing Board.⁴⁹ Since then, I have had a number of meetings with both Professional Standards Department and with the Police Ombudsman. Both have made significant progress towards a system which protects confidentiality but enables a fuller analysis to be undertaken as to the increase. It is anticipated that the new system will permit a fuller analysis of the causes of the increase. I therefore consider recommendation 17 of the 2008 Annual Report to be implemented but will monitor the situation over the next 12 months, analyse the results and report in next year's Annual Report.

THE REGULATION 20 PROCEDURE

The Police Ombudsman has statutory responsibility for the investigation of certain matters referred by the Policing Board, the Public Prosecution Service and the Chief Constable.⁵⁰ The Police Ombudsman also has power to investigate certain matters of his own volition. Investigations have included, for example, deaths in police custody, discharge of Taser, the firing of Attenuating Energy Projectiles (AEPs) and the use of CS spray. At the conclusion of the investigation, a report (the Regulation 20 report), is sent to the Secretary of State, the Policing Board and the Chief Constable. A review panel was established by PSNI to consider the recommendations of the Police Ombudsman's Regulation 20 reports.⁵¹ A Policing Board official sits on the review panel as an observer. The PSNI provides the Policing Board with a schedule of its responses to the Police Ombudsman's Regulation 20 reports on a six-monthly basis.⁵² The Regulation 20 reports issued between 1 April 2008 and 31 March 2009 are analysed below.

Ten Regulation 20 reports were issued in that period, dealing with incidents between 14 January 2004 and 8 July 2007. As each incident requires thorough

⁴⁹ Recommendation 17, 2008 Human Rights Annual Report, p.64.

⁵⁰ Police (Northern Ireland) Act 1998, s.55.

⁵¹ The panel consists of representatives from PSNI Operational Support, PSNI Professional Standards department, the Police College and the PSNI Human Rights Legal Adviser. A representative from the Policing Board and from the Office of the Police Ombudsman also attend each meeting.

⁵² Discharging its continuing obligation under recommendation 25 of the 2005 Human Rights Annual Report, p.169.

investigation, there is commonly a time lag between the date of the incident and publication of the report. Table 7 sets out the types and locations of the incidents.

Table 7: Regulation 20 reports, 1 April 2008 to 31 March 2009.

Incident/ Allegation	Referral	Date of Incident	Location
Discharge of CS spray	2	12.09.04 22.11.04	Derry/Londonderry Enniskillen
Assault by police officer	1	23.10.06	Belfast
Discharge of firearm	1	17.01.04	Derry/Londonderry
Use of Force	2	21.09.06 8.07.07	Newry Coleraine
Circumstances surrounding death	1	24.05.06	Belfast
Failure of duty/attempted suicide/ drowning	2	27.04.05 15.05.05	Antrim Warrenpoint
Dangerous driving	1	29.01.06	Belfast

During this period, two reports related to the discharge of CS Spray. One report was concerned with the discharge of a firearm, unlike 2007/08 when four reports related to discharge of a firearm.⁵³ Two reports related to excessive or inappropriate use of force and one related to assault by a police officer. There were no reports during the period relating to discharge of Attenuating Energy Projectiles (AEPs) or to deaths following a pursuit.

In both cases where CS Spray was used, the Police Ombudsman found the use to be justified and proportionate. In one of the cases, however, he was critical of the officer's failure to complete all the relevant paperwork. The

⁵³ 2008 Human Rights Annual Report, chapter 6, p.95.

completion of paperwork, which in this case related to the important matter of after-care, is an essential element of police transparency and accountability. All operational police officers should be trained in the use of CS Spray and in the procedure following discharge, including the completion of forms and notification to the Police Ombudsman. The Police Ombudsman recommended that all officers be reminded of their responsibility to document all aspects relating to the use of CS Spray. I echo that recommendation.

The 'discharge of firearm' incident occurred in 2004. It involved an "unnecessary and dangerous" shot at a vehicle as it passed through a police checkpoint in Derry/Londonderry.⁵⁴ The Police Ombudsman was critical of the officer concerned in that he did not attempt any less dangerous option before resorting to discharge of a live firearm, which endangered the lives of the occupants of the vehicle and fellow officers. As a result of inaccuracies in the account given by the officer, a file was referred to the Director of Public Prosecutions (DPP). The DPP issued a direction of no prosecution on 19 January 2006. The Police Ombudsman made two recommendations: that the officer receive a SWW and undertake retraining; and, that when officers are intending to stop vehicles they must clearly identify themselves and their position by the wearing of high visibility clothing and be in possession of a torch.

In 2008, the Police Ombudsman made that same recommendation in respect of high visibility equipment. Given the inherent dangers involved when vehicles are stopped at night, it is important to reinforce the message that officers intending to stop vehicles must at all times be visible. Furthermore, in view of the serious consequences of discharging a firearm and the requirements of Article 2 (right to life) of the European Convention on Human Rights (ECHR), I will be monitoring closely and observing training, policy and practice on the use of force and firearms.⁵⁵

⁵⁴ As per report of the Police Ombudsman, Discharge of Firearm Madam's Bank Road, April 2008.

⁵⁵ This is considered further at chapter 8 (Use of Force).

One case concerned the inappropriate use of force when a police officer threw his weapon at a motorcyclist who had accelerated away from a police vehicle. The motorcyclist lost control and his vehicle hit a police car. The Police Ombudsman warned that the throwing of the rifle may have resulted in the discharge of a shot; damage to the rifle and/or the police losing possession of a firearm; and, potential for serious injury if the motorcyclist had lost total control. He concluded that the use of the firearm was inappropriate and made two recommendations of general application. Firstly, police officers' roles during vehicle checkpoints should be clearly identified and reinforced during training. Secondly, the PSNI should review its training materials to ensure that sufficient emphasis is given to the conflict resolution model and use of force. Ultimately, the purpose of the recommendations is to ensure that police officers know the tactical options available to them in such situations and to ensure alternative courses of action are explored.

Another case concerned the use of excessive force by a police officer on a person who was detained in police custody. The officer concerned remained in the cell, alone with the detainee, for a matter of seconds after clothing was removed for forensic analysis. During that time the detainee approached the officer in an aggressive manner, requiring the officer to use force to prevent an assault. The Police Ombudsman concluded that as there was no valid reason to remain in the cell after the clothing was seized, the officer had created circumstances in which further confrontation was likely. The subsequent use of force, therefore, had been avoidable. The Police Ombudsman recommended that the officer be dealt with by way of Advice and Guidance. The PSNI accepted and implemented the recommendation.

There was one allegation of assault involving an off-duty police officer. It was alleged that the police officer had been abusive towards two members of the public and had spat at them during an altercation in a bar. The case was referred to the DPP, who recommended prosecution. The officer pleaded guilty to aggravated assault and was fined and bound over for a period of six months. The Police Ombudsman recommended that all police officers be reminded that their conduct both on and off duty must be of the highest

probity. The PSNI has highlighted the work which had already taken place in requiring all officers to indicate that he or she has read and understands the Code of Ethics and has taken steps to remind all officers, not just those with access to computer terminals, of the standard expected of them.⁵⁶

One case arose as a result of an allegation of dangerous driving. The officer concerned, who was driving a police Land Rover, collided with a member of the public who was bearing a machete and a knife. The Police Ombudsman concluded that the use of force was necessary and proportionate in preventing serious injury to officers and members of the public, and in achieving an arrest.

Another case concerned the death of a member of the public who jumped from a building while police officers were in attendance attempting to prevent him committing suicide. No criticism was made of the officers who attended the incident but the Police Ombudsman recommended that awareness training for Incident Commanders in the role, function and use of trained negotiators at critical incidents should be introduced. That training should emphasise the risk of using third party intermediaries. He also recommended that officers would benefit from a General Order setting out what should and should not be done when dealing with such incidents. The PSNI accepted and has implemented those recommendations.

There was another case relating to an attempted suicide of a detained person. The detained person warned the officers of the risk of self-harm but despite that warning the officers failed to monitor properly and ensure the detained person's safety. In particular, one officer failed to remove a draw cord from the clothing, which was used as a ligature. The Police Ombudsman concluded that two officers had failed to properly care for the welfare of the detained person. He recommended that the officers be dealt with by way of Advice and Guidance targeted at avoiding the recurrence of any such failing. A recommendation was also made for one officer to receive Advice and Guidance for inappropriate comments. The PSNI has responded to the report

⁵⁶ As required by Section 52(8) Police (Northern Ireland) Act 2000.

by ensuring that the Safer Detention and Handling of Detained Persons⁵⁷ guidance is incorporated into the revised Custody Policy and immediately issued a direction that all shoelaces and belts be removed from any detained person.

The final case concerned police officers attending an incident, where a member of the public was drowning. Sadly, that person lost his life but the Police Ombudsman concluded that the officers took reasonable steps to protect life and pursued all practical and safe avenues available in attempting the rescue. The Police Ombudsman, however, noted that the officers were not equipped with flotation aids and made three recommendations aimed at ensuring all officers are trained at an early stage in rescue techniques and that the PSNI should review their supply and distribution of appropriate flotation aids. The PSNI accepted and has implemented those recommendations.

During the course of the next reporting year, I will work closely with the newly appointed Human Rights Training Adviser to ensure that all lessons learned from incidents such as those outlined above and highlighted by the Police Ombudsman are integrated into training.

PSNI APPROACH TO SUSPENSIONS, RETIREMENT AND SEVERANCE

There has been much discussion by the Policing Board of the PSNI approach to suspensions, resignations and retirement. In particular, there is concern that the confidence of the community may be undermined if officers are seen to avoid misconduct proceedings by resigning or retiring from the PSNI. The issue is one which was reported on by Dame Nuala O'Loan, former Police Ombudsman.⁵⁸ In view of those concerns I set out in some detail below the relevant provisions.

⁵⁷ Produced by the National Centre for Policing Excellence on behalf of ACPO and the Home Office.

⁵⁸ *Review under Section 61(4) of the Police (Northern Ireland) Act 1998*, Police Ombudsman Dame Nuala O'Loan, July 2007.

Suspension of police officers

Where there has been a report, allegation or complaint which indicates that the conduct of an officer did not meet the appropriate standard, Conduct Regulations give the Chief Constable⁵⁹ power to suspend the officer from duty, whether or not the matter has been investigated.⁶⁰ The Chief Constable retains the power to suspend the officer at any time.⁶¹ This is a discretionary power and the Chief Constable is not required to suspend an officer.

The PSNI Integrity and Professional Standards Policy Directive provides that an officer will be suspended only in exceptional circumstances after all other options, including re-positioning, have been considered. Suspension is to be used only in an appropriate case, where it is necessary to protect the integrity of the organisation or investigation.⁶² It is clear that suspension of a police officer raises a number of issues and that a decision should not be taken to suspend unless it is necessary, proportionate and justified. PSNI policy recognises that.⁶³

The policy sets out the factors which the Chief Constable must take into consideration before reaching a decision to suspend. They include the nature and seriousness of the allegation; the strength of evidence and nature of the investigation; the interests of both the public and the PSNI; the effect on public confidence; whether the investigation of the allegation would be compromised if the officer remains in post; 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; the likelihood of a criminal conviction or adverse finding at a disciplinary hearing; and any impact on PSNI organisational efficiency.

⁵⁹ Or another senior officer acting with delegated authority: RUC (Conduct) Regulations 2000, 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.

⁶⁰ Conduct Regulations, reg.5(1).

⁶¹ Conduct Regulations, reg.6.

⁶² PSNI Policy Directive 11/07, Integrity and Professional Standards, 1 August 2007, s.7, para.8(1)(c).

⁶³ *Ibid.*, s.7, para.8(1)(b).

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.⁶⁴ 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, payment will be suspended.⁶⁵ 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. 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 with the disciplinary proceedings in advance of the criminal proceedings.

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.⁶⁶ PSNI policy⁶⁷ 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.⁶⁸ This means that officers who are the subject of 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 non-serious criminal or non-disciplinary investigation are free to elect to

⁶⁴ *Ibid.*, s.7, para.8(8)(a)-(c).

⁶⁵ Police Service of Northern Ireland Regulations 2005 SR 2005 No.547 (2005 Regulations), Schedule 3.

⁶⁶ *Ibid.*, reg.14.

⁶⁷ Which follows Annex C of the Determinations under the Police Service of Northern Ireland Regulations 2005.

⁶⁸ PSNI Policy Directive 11/07, s.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.

resign. As reported by Professional Standards Department, an officer who is suspected of having committed a criminal offence or committed a serious breach of discipline will be suspended.

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".⁶⁹

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.⁷⁰

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.⁷¹ Between 1 April 2008 and 31 March 2009, 28 officers left the PSNI while under investigation.

⁶⁹ PSNI Policy Directive 11/07, s.7, para.8(12)(b).

⁷⁰ Severance Scheme Handbook, para. 6(3) and repeated in PSNI Policy Directive 11/07, s.7, para.8(12)(c).

⁷¹ Discharging its continuing obligation under Recommendation 27(d) of the 2005 Annual Report, p.170.

Table 8: Allegations made against officers leaving the PSNI and their reason for leaving, 1 April 2008 to 31 March 2009

Allegation	Reason for leaving (* indicates whether the officer was suspended at time of leaving)
Failure to parade for duty	Resigned
Failure to discharge debt	Resigned
Drunken behaviour	Severance
Traffic/Driving offence x3	Resigned x 2 Retired
Domestic incident	Resigned
Breach of non-molestation order	Contract not renewed
Drunk in charge of firearm	Resigned
Drink driving offence x 5	Resigned x 4 Severance x 1
Breach of data protection x3	Severance x3
Fraud	Resigned
Misuse of drugs	Resigned
Theft, obstruction and business interest	Resigned
Sex offence x 3	Resigned x 3
Attempted murder	Resigned

Table 8 indicates that of 24 police officers who left the PSNI with disciplinary proceedings pending, 17 (71%) resigned. There were five severances (21%), one retirement (4%) and one contract not renewed (4%). In 2007/08, of 19 officers who left the police service, 33% left on voluntary severance and 15% retired. The number of officers leaving the police service with proceedings pending has therefore increased, however there has been a significant decrease in the number of officers leaving through severance or retirement. In

the 2008 Annual Report concern was expressed at the number of officers leaving the police service while disciplinary proceedings were pending.

Review of PSNI approach to suspensions etc and recommendation 18 of the 2008 Annual Report

The Office of the Police Ombudsman was established under Part VII of the Police (Northern Ireland) Act 1998. The primary statutory responsibility of the Police Ombudsman is to secure an efficient, effective and independent complaints system, and to do so in the way he thinks best calculated to secure the confidence of the public and of the police in that system. The Police Ombudsman has independent control of the police complaints system and it is the Police Ombudsman who decides how complaints should be handled. He also has the power to intervene in non-complaints cases, in the public interest. The Ombudsman's power to investigate includes investigation of both criminal offences and possible disciplinary breaches. Where an investigation report indicates that a criminal offence may have been committed, that file is then sent to the Director of Public Prosecutions with a recommendation. The Ombudsman will also consider the disciplinary aspects of a case.

The Chief Constable is obliged to provide all necessary assistance to the Police Ombudsman in the course of his investigation to facilitate the interview of suspect officers and officer witnesses.⁷² The Police Ombudsman may also call upon the Chief Constable to assist with the conduct of an investigation. The Chief Constable is required to take immediate steps, upon notification of a complaint to him, to preserve evidence.⁷³ If the complaint is made to the Police Ombudsman, he may require the Chief Constable to take such steps.

During an investigation conducted by the Police Ombudsman, if material comes to light in a serious case, any such material or evidence is brought to

⁷² By virtue of the NIO Guidance, it is only in exceptional circumstances that an officer may not be made available.

⁷³ S.52(2)(b) Police (Northern Ireland) Act 1998.

the attention of the Chief Constable to consider whether the officer should be suspended.

Police Ombudsman investigators have the same powers as a police constable under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE). For example, the investigator may search premises and seize documentation. He can establish incident scenes and direct Scenes of Crime Officers and forensic services. He may arrest a police officer, if absolutely required to do so, to progress an investigation.

In respect of a police officer's attendance for interview, the Police Ombudsman does not have power to compel an officer, whether in the capacity as a witness or suspect, to attend for interview but must ask the PSNI to order that officer to attend. If the officer then fails to attend, he or she will be absent without leave from duty and have committed a breach of the Code of Ethics and may be disciplined in respect of that. In this context, it must be remembered that even if an officer attends for interview there is no power to compel him to provide information and in that respect he is treated in the same way as a member of the public who is suspected of committing an offence.

When a police officer retires from the police service, he or she cannot be investigated in relation to misconduct carried out during their service, however, he or she may still be investigated for criminal matters. The former Police Ombudsman agreed that a police officer should not be subject to a misconduct investigation post retirement or resignation. She did, however, recommend that she be given statutory power to compel a retired officer to attend interview as a witness to an alleged criminal activity or serious misconduct of a police officer.⁷⁴

That recommendation was not accepted by the Northern Ireland Office and has not been provided for. The current Police Ombudsman has considered

⁷⁴ *Review under Section 61(4) of the Police (Northern Act) 1998*, Police Ombudsman Dame Nuala O'Loan, July 2007, recommendation 13.

the recommendation and has indicated that he does not accept the reasoning and does not call for a power to compel. It is significant that the Police Ombudsman's statutory duty is to manage the complaints system in a way he thinks best calculated to secure the confidence of the public and of the police in that system. That being the case, it is for the Police Ombudsman to decide on the best means of achieving that. It is the Police Ombudsman who retains statutory responsibility for this issue and it is he who must be entrusted to carry out that function. The Police Ombudsman has indicated he does not require such a power. In this context, it is worth noting that a police officer, who is alleged to have committed a criminal offence, will be liable to investigation in respect of alleged criminal activity whether retired or not.

In order to address concerns raised by some Members of the Policing Board that there is a perception that officers resigning or retiring from the police service with serious misconduct proceedings pending do so to avoid being held to account, I have been in detailed discussions with the Head of PSNI Professional Standards Department (PSD) and his officers on this issue.

The PSNI and the Office of the Police Ombudsman have prepared a Memorandum of Understanding, regarding the suspension and re-positioning of officers, to facilitate the exchange of information at the relevant stage of an investigation in relation to the Chief Constable's duty to consider the exercise of his powers to suspend or re-position an officer.⁷⁵ The Memorandum informs when and how the Police Ombudsman will express his views as to the suspension or re-positioning of a police officer. If considered appropriate, and if the circumstances merit it, the Police Ombudsman will make a recommendation to suspend or re-position the officer. Both organisations will meet regularly to review the operation of the Memorandum.

Discussions are underway between the Policing Board and Professional Standards Department about including a form of words both within the Code

⁷⁵ The power to suspend arises under regulation 5 of the RUC (Conduct) Regulations 2000, as amended. The power to re-position arises as the PSNI is under the direction and control of the Chief Constable and this includes the power to make management decisions regarding deployment.

of Ethics and within the speech delivered at the Police College when an officer is confirmed in rank. Officers will be reminded that it is the expectation of the PSNI that each officer, whether serving or not, is under a moral obligation to co-operate fully with the Office of the Police Ombudsman in all of his investigations. This is more than cosmetic. It sends a clear message both to officers and to the public that the office of constable is one of responsibility and public service, which does not cease when an officer leaves the service.

That being the case, I am satisfied that the fact that an officer who faces criminal or serious misconduct proceedings may be suspended pending investigation (and therefore unable to resign or retire from the police service without the consent of the Chief Constable) adequately addresses the concerns raised. The reason for limiting an officer's ability to retire or resign when under suspension for the most serious misconduct is related to the importance of the role of police officers within society and the need to control the conduct of officers. If an officer retires or resigns he or she is no longer under the control of the Chief Constable and cannot be required to respond to lawful orders thereby escalating the risk that an officer may impede an investigation by interfering with the investigation. The Chief Constable is able, if the officer remains within the police service, to control other officers' access to that officer for the same reason. However, suspension often for long periods of time means that an officer continues to be paid without contributing to the service and, in many cases, stays long enough simply to be dismissed at the end of the process.

All of the competing interests must be balanced. The concern expressed by a number of Policing Board Members, that an officer can retire or resign and therefore avoid discipline proceedings and, more importantly, can impede an investigation into the truth, is a real and understandable concern. Reference has been made to a number of cases to illustrate the point. However, one must remember that serious misconduct which involves criminal activity can be investigated regardless of whether an officer has left the service. Currently an officer facing discipline proceedings is already prohibited from taking

voluntary severance or medical retirement without PSNI PSD first considering the issue.

The Policing Board will continue to monitor the PSNI's approach to suspension etc. and will identify and discuss any case where a police officer has not been suspended in circumstances which suggest suspension was the appropriate response. In that way, the Policing Board, the Police Ombudsman and the PSNI PSD will be aware of any issues arising and will work together to deal with them. It can be noted that there has not been an occasion when the Police Ombudsman (whether headed by the current or previous incumbent) has suggested or made a recommendation that an officer be suspended, when this has not been acted upon by the PSNI. It is also worth noting, in this context, that the complaints system must enjoy the confidence of the public but it must also be proportionate and fair to the police officers concerned; police officers also enjoy employment rights protection.

PSNI PSD carried out analysis of suspensions and resignations within the PSNI focusing in particular on how the PSNI compared to other police services. From that analysis it can be seen that the PSNI in fact suspends more officers than most other comparable services. In respect of suspended officers being permitted to resign prior to misconduct proceedings, the PSNI is similar to Greater Manchester and West Midlands police services with approximately one third of officers being permitted to resign.

In any event, there is no legislative power for the PSNI to prevent an officer who is not suspended from retiring or resigning. The power to prevent an officer from doing so is triggered by suspension.⁷⁶ On balance it seems that the current system, so long as it is properly applied and the Policing Board continues to monitor and report upon it, meets the concerns raised. I do, however, take this opportunity to remind officers that the Criminal Law (Northern Ireland) Act 1967 applies to all persons, including serving officers

⁷⁶ Determination C of reg.14, 2005 Regulations.

and former officers, and requires that the commission of an offence, if known about, is reported.

Having considered all of the issues, and the potential solutions, I have resolved not to make any formal recommendation and withdraw recommendation 18. I will report in due course in relation to the proposed amendment to the Code of Ethics.

Currently, the service is considering and working on a proposal to reform PSNI complaints and discipline in line with police reform in England and Wales following the review of police disciplinary arrangements report (the Taylor Review).⁷⁷ The Home Office implemented the recommendations of the report by new conduct⁷⁸ and performance⁷⁹ regulations which came into force in England and Wales on 1 December 2008. Home Office guidance has been issued. That being the case, I consider it timely to review in some detail the arrangements currently in force in Northern Ireland.

PSNI INTERNAL DISCIPLINE

The PSNI provides me with information on current internal investigations of misconduct and disciplinary action on a six-monthly basis.⁸⁰ The number of investigations of misconduct is correlated to the relevant Article of the Code of Ethics breached. Table 9 sets out this information for the period 1 April 2008 to 31 March 2009.

⁷⁷ Published in January 2005 following a review of police disciplinary arrangements in England and Wales, commissioned by the Home Secretary, and led by Sir Bill Taylor.

⁷⁸ The Police (Conduct) Regulations 2008, S.I. 2008 No. 2864.

⁷⁹ Police (Performance) Regulations 2008, S.I. No. 2862.

⁸⁰ Discharging its continuing obligation under recommendation 27(e) of the 2005 Human Rights Annual Report, p.170. These figures include preliminary inquiries which may not result in a full investigation

Table 9: Current investigations of misconduct registered by Professional Standards Department, 1 April 2008 to 31 March 2009⁸¹

Article of Code of Ethics	Number of cases
Article 1.1	6 (10) ⁸²
Article 1.5	14 (28)
Article 1.6	1 (0)
Article 1.9	5 (6)
Article 1.10	41 (40)
Article 2.1 ⁸³	6 (0)
Article 2.2	4 (13)
Article 3.1	5 (8)
Article 3.2	2 (0)
Article 3.3	5 (6)
Article 4.1	1 (1)
Article 4.3	0 (3)
Article 4.4	3 (1)
Article 6.1	4 (6)
Article 7.1	26 (10)
Article 7.2	83 (105)
Article 7.5	2 (3)
Article 8.1	9 (9)
Article 8.2	0 (2)

⁸¹ Not included in these figures are cases referred from the Police Ombudsman for misconduct proceedings.

⁸² Figures in brackets denote the number of cases in 2007/2008.

⁸³ Footnote 41 above refers.

Article of Code of Ethics	Number of cases
Article 9.1	0 (5)
Article 9.2	1 (0)
Article 10.1	1 (0)
Not Applicable ⁸⁴	54 (14)
Total	273

Please Note: Within some categories an officer may be counted more than once.

The PSNI also provides me with information on completed misconduct investigations.⁸⁵ Table 10 sets out the number of completed misconduct investigations according to outcome for the period 1 April 2008 to 31 March 2009.

⁸⁴ The Code of Ethics does not apply.

⁸⁵ These figures also include preliminary inquiries which may not result in a full investigation.

Table 10: Completed misconduct investigations, 1 April 2008 to 31 March 2009

Outcome*		Number of Misconduct Investigations	
		April 2007 – March 2008	April 2008 – March 2009
Formal misconduct sanctions	Caution	2	7
	Reprimand	2	4
	Fined	7	12
	Reduction in pay	10	7
	Reduction in rank	3	1
	Required to resign	18	7
	Dismissed	10	3
	Sub-total	52	41
Other hearing outcome	Not Guilty	2	0
	Charge withdrawn	0	1
	Charge dismissed	1	1
	Sub-total	3	2
Informal sanction	Management discussion	29	34
	Advice and guidance	114	196
	Superintendent's Written Warning	52	74
	Sub-total	195	304
Left the Service	Resigned	10	17
	Retired	3	1
	Medical discharge	2	0
	NFA Severance	5	3
	Sub-total	20	21
Other outcome	No further action (NFA)	80	141
	Returned to DCU	76	79
	File to Police Ombudsman	7	2
	N/A	1 ⁸⁶	0
	Sub-total	164	222
Total		434	590

* 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 10 demonstrates, in 2008/09 there was an increase in the number of investigations resulting in no further action, Advice and Guidance and management discussions. There was also an increase in the number of SWWs but a decrease in officers being dismissed or required to resign. While

⁸⁶ 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.

the figures may suggest that the PSNI has adopted a more lenient approach to discipline, I am satisfied having had access to all of the relevant materials, that what is represented is a change in the nature of the misconduct allegations this year.

Cases returned to Districts

A case may be returned to District to be dealt with in two situations: (i) if a case is referred back to PSNI PSD by the Police Ombudsman following an investigation in which it is concluded that no formal action is required; or (ii) following an investigation by PSNI PSD which decides that no formal action is required. This is not to say that the PSNI will not deal with any issues arising, or that they view them as unimportant, but simply that it is more appropriate for the case to be dealt with at local level. Districts may also initiate misconduct action directly without it having come from PSNI PSD or the Police Ombudsman.

In 2008/09, there has been an increase in the number of investigations being returned to Districts. In total, 79 misconduct investigations were returned, compared with 76 cases returned in 2007/08.⁸⁷ The Policing Board continues to monitor those cases being returned to District. It is important that both the PSNI and the Policing Board keep under review what action is taken at District level. I receive details of all investigations which are returned to the District Command Units together with the action taken on each case.⁸⁸ In those circumstances, I remind the PSNI that recommendation 19 of the 2008 Annual Report is a continuing obligation and it is of particular importance that the report from the District Command Unit, detailing the action taken following the return of a case, is provided.

JUDICIAL REVIEWS

The PSNI provides me with details of all judicial review cases brought against the PSNI on a six-monthly basis, indicating which cases were won, which were

⁸⁷ Statistics as per PSNI PSD Statistics 2008/2009.

⁸⁸ As per recommendation 19 of the 2008 Human Rights Annual Report, p.109.

lost and the terms of any agreement under which any of them were settled. The PSNI also informs me of any action taken or proposed in response to any judicial review cases brought against the PSNI.⁸⁹ 15 applications for judicial review were lodged against the PSNI in the 2008/2009 period. The applications concerned the following issues: PSNI decision to arrest and detain; the PSNI decision to issue Taser; the PSNI decision to change the status of Armagh Custody Suite; PSNI decision to administer a breath test in applicant's home; PSNI prisoner escorts; Retention of footwear impressions; RUC Full Time Reserve Officers; Dismissal due to misuse of drugs.

Criminal convictions and disciplinary action

The PSNI has provided the Policing Board with information on the number of officers convicted of criminal offences and the disciplinary action taken in response between 1 April 2008 and 31 March 2009. This information is set out in Table 11 below. In several cases, the outcomes of internal misconduct investigations were pending so I am unable to report on the disciplinary action taken. A total of 39 officers were convicted of at least one criminal offence during the period. As the table records the total number of convictions for each category of offence, it is not reflective of the total number of officers convicted of a criminal offence; an officer may have been convicted of more than one offence.

⁸⁹ Discharging its continuing obligation under recommendations 27(f) and (g) of the 2005 Human Rights Annual Report, p.170.

Table 11: Criminal convictions and disciplinary action, 1 April 2008 to 31 March 2009

Result Charge	Penalty Points	Fined	Disq. driving	Sus. sentenc	Prison	Other	Result Disc. Action 08/09
Attempted Murder	0	0	0	0	1	0	1 x Resigned prior to hearing
AOABH	0	0	0	1	0	0	1 x Required to resign
Common assault	0	3	0	0	0	(1)*	2 x Fined 1 x Pending Investigation 1 x Required to resign & Reprimand
Harassment	0	0	0	1	0	0	1 x Resigned prior to hearing
Breach Non Molestation Order	0	1	0	0	0	0	1 x Pending Investigation
Excess speed	4 (4)	0	0	0	0	0	4 x SWW
Breach Non Molestation/ Occupation order	0	0	0	0	0	(2)	
Theft	0	1	0	0	0	0	1 x Required to resign
Forgery	0	0	0	0	0	0	
Disorderly behaviour	0	3	0	0	0	0	2 x Pending 1 x Required to resign & Reprimand
Excess alcohol	1	0	4	0	0	0	1 x Required to resign 3 x Resigned 1 x Pending
Careless driving	3	0	1	0	0	0	1 x SWW 1 x Advice/Guidance 2 x Pending
Dangerous driving	0	0	1	0	0	3	1 x Reduction pay 2 x Fined 1 x Pending
Fail to report/stop	0	0	1	0	0	0	1 x Pending
No driving licence	0	0	0	0	0	0	N/A
No insurance	1	0	0	0	0	0	1 x SWW
	(2)	(3)	(2)				

Result	Penalty Points	Fined	Disq. driving	Sus. sentence	Prison	Other	Result
Charge							Disc. Action 08/09
No MOT	0	0 (1)	1	0	0	0	1 x Pending
Driving using Mobile Phone	0	0 (1)	0	0	0	0	N/A
Breach of Data Protection Act	0	0 (1)	0	0	0	8	5 x Caution 3 x SWW
Breach of Computer Misuse Act	0	0	0	0	0	1	1 x Caution
Possession Firearm	0	0	0	0	0	1 (1)	1 x Fined
Possession Ammunition	0	0	0	0 (1)	0	0	N/A
False Represent.	0	0	0	0	0	0 (3)	N/A
Possession of Drugs	0	0 (1)	0	0	0	0	
Riding bicycle without due care	0	1	0	0	0	0	1 x Advice/Guidance
False Accounting	0	0	0	0	0	2	2 x Pending Outcome
Smoking in a smoke free place	0	1	0	0	0	0	1 x SWW
Breach of Litter Order	0	2	0	0	0	0	2 x SWW
Breach of railway bye law	0	0	0	0	0	1	1 x Advice/Guidance
Obstructing Police	0	0	1	0	0	0	1 x Pending Outcome

* The figures in brackets represent criminal convictions and disciplinary action in the corresponding period in 2007/2008.

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 wrongdoing on the part of an identified police officer. In the 2007 Annual Report, some reservations were reported concerning the use of PSNI’s integrity tests conducted during the period April 2006 to March 2007.⁹⁰

As part of this year’s monitoring work, I have met with PSNI PSD and have received a detailed briefing on the policy and its application. I am satisfied in both respects. Integrity tests are one of a number of options considered by officers within PSNI PSD 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.

⁹⁰ 2007 Annual Report, chapter 4, p.69.

CHAPTER 7: PUBLIC ORDER

Public order policing in Northern Ireland raises difficult human rights issues, requiring a balancing of the rights of individuals and groups with competing interests. During a parade, a number of rights conflict, for example the right to freedom of expression, assembly and association¹ on the one hand and the right to protest or to enjoy peaceful enjoyment of the home environment on the other.²

The use of force by police officers during public events and parades raises significant human rights issues, which are considered in chapter 8 (Use of Force). In this chapter, I want to re-state that improper or excessive use of force by police officers undermines the legitimacy of policing operations and undermines public confidence in the police. This is critical in the context of public order policing of parades in Northern Ireland, which has changed significantly over recent years due to increased public confidence in the police and as a result of many individuals and groups engaging with the police in the lead up to and during previously contentious parades. Public confidence may be lost if police officers are not clear about the circumstances in which they can use force and the legal thresholds for such use. The PSNI has incorporated within public order training robust guidelines on the use of force and appreciates the central importance of use of force training in all police training.

Parades Commission's determinations

The Public Processions (Northern Ireland) Act 1998 places a duty on the Parades Commission to make 'determinations' affecting the human rights of those wishing to parade and those who object to the parades. A Parades Commission determination is a legally binding decision on the legality of a parade, and may contain a number of conditions that must be complied with in order that a parade may go ahead, for example, a band may be allowed to march through a certain area but may not be allowed to play music in parts of

¹ Articles 10 and 11 of the European Convention on Human Rights (ECHR).

² Article 8, 10 and 11, and Article 1 of Protocol 1 ECHR.

it. Any breach of a Parades Commission determination is a criminal offence and thus a matter for the police and thereafter the Public Prosecution Service.

In addition to ensuring that Parades Commission determinations are adhered to, the PSNI must also ensure that public order is maintained at parades and, if justified under the circumstances, this may require police officers to use force. It is therefore essential that the policing of a parade is carefully planned and is a carefully executed operation.

Public confidence in public order policing

A report was published by the Institute for Conflict Research in June 2009³ detailing the findings of research carried out between January 2009 and March 2009 into contentious parades in Northern Ireland. The research involved interviewing people across 26 locations who were involved in organising parades, people opposed to parades, and individuals involved in mediation or in facilitating dialogue between the disputant parties. The study found that, whilst there remained concerns in some areas, “in the majority of locations people noted positive changes had occurred in relation to the policing of parades,” with improvements being cited such as fewer police on the ground, less use of riot gear, fewer arrests, and better communication and relations between the police, key actors and people on the street.

In a few locations, people were of the opinion that the events were over-policed; that some officers still took an enforcement approach rather than facilitating dialogue, which only served to sustain tensions rather than reduce them; and that the closure of police stations, particularly in smaller rural locations, reduced day to day contacts with the police and had led to a reduction in police knowledge of the local community or environment.⁴

Police officers were also interviewed during the course of the research, and they cited a number of areas where they believed there had been significant

³ *Local Accommodation, Effective Practice in Responding to Disputes Over Parades*, N. Jarman, M.K. Rallings and J. Bell, June 2009.

⁴ *Ibid.* pp. 57 – 58.

improvements in policing contentious parades and protests. In particular, the control of alcohol at parades was cited by officers as being an area where considerable improvements had been made.⁵

It is evident that in order to police parades effectively, the PSNI must continue to maintain and develop good working relations with the Parades Commission, those involved in organising parades, those involved in protesting against parades, and other groups or individuals in the community. This is perhaps where the PSNI has made its greatest progress. There is an open dialogue with police leading up to and during the marching season, which informs planning and operational briefings. As referred to in chapter 13 (Policing with the Community) it is partnership working with the community that has enabled the police to maintain public order and legitimacy in the course of policing parades.

PUBLIC ORDER TRAINING

In the 2008 Human Rights Annual Report (the Annual Report) it was recorded that the PSNI had carried out extensive training on human rights and public order policing for police officers involved in the operational planning and command of public processions and related protests. The training outlined the legislative framework for parades and protests, relevant human rights standards and key developments in public order case law. A large part of the training focused on a number of scenarios requiring officers to apply their knowledge of the legal framework and their police powers to practical operational planning.⁶ Similar training had previously been carried out in 2005 and 2006. The training materials are incorporated into the Urban Regional Gold Command Strategy. That is a very positive development.

I have attended and observed a number of training exercises including combined operational training involving all relevant agencies. The training was impressive both in terms of content and practical delivery. PSNI public order

⁵ *Ibid.* p. 59.

⁶ 2008 Human Rights Annual Report, chapter 7, pp. 119 – 120.

training has been cited as exemplary and a template for best practice. I must commend the PSNI and PSNI trainers on the development and delivery of an exceptional package of training which has at its core the duty to respect, protect and fulfil the human rights of all members of the community. While the training is, rightly, considered to be exemplary the practical application of that training requires regular monitoring, adjustment and reinvigoration. Accordingly, I will continue to monitor and report upon the PSNI approach to, and execution of, public order policing.

During the summer months of 2009, I attended Gold and Silver command meetings leading up to the commencement of the marching season and in respect of particular parades where public disorder was anticipated. At all stages of the process, including operational briefings, officers were clear what the limits of their powers were and knew of both the technical and practical application of human rights principles. Of particular significance was the close attention paid to the rights of children and other vulnerable groups. Throughout the meetings and briefings, the vulnerability of children and other vulnerable groups was highlighted and assessed and steps were put in place to ensure their rights were protected.

I also observed, from the silver command and control room, one parade during which there was serious public disorder.⁷ While this parade was outside this year's reporting period I can record that the Silver Commander showed exemplary knowledge, understanding and practical application of human rights principles. At all stages he kept under review the exercise of police powers, tactical decisions and authorisations for the deployment and use of force. During what was a long and extremely challenging process he displayed an instinctive understanding of the legal framework and his ultimate objective. He demonstrated that he clearly understood not simply what the Human Rights Act required of him, but how that knowledge needed to be translated into practice.

⁷ Ardoyne, 13 July 2009.

While a number of issues have been raised by key stakeholders in respect of the use of Attenuating Energy Projectiles (AEPs) during the parade, which I will consider separately and report upon, the Silver Commander must be credited for the work he did.

In order to ensure that officers for whom the public order training is designed have received the training, and are aware of up to date developments in case law, it was recommended in last year's Annual Report that the PSNI conduct training on a bi-annual basis, subject to any significant developments or changes in the legal framework in which case training should be conducted forthwith.⁸ The PSNI have accepted this recommendation. The PSNI Human Rights Legal Adviser and the Police College have agreed that the next training will occur in the first quarter of 2010.⁹ Recommendation 20 of the 2008 Annual Report has therefore been implemented in full but I make clear that the recommendation is intended to be a continuing obligation requiring the PSNI to conduct relevant training as required but no later than every two years. I intend to observe the training in 2010 and shall report accordingly in next year's Annual Report.

MONITORING POLICING OF PUBLIC ORDER EVENTS

As discussed in chapter 8 of this report, and in implementing recommendation 21 of the 2008 Annual Report, the PSNI now supplies the Policing Board with statistics on all uses of force recorded on the electronic use of force monitoring system on a six monthly basis. The information supplied by the PSNI includes details of the number of occasions each type of force was used according to the incident type. Subsequent to the PSNI report covering the period 1 April 2008 to 31 March 2009, the Policing Board's Human Rights and Professional Standards Committee have written to the PSNI to request that all future use of force reports highlight any correlation between high incidents of

⁸ Recommendation 20, 2008 Human Rights Annual Report, p.120.

⁹ PSNI Human Rights Programme of Action 2008 – 2009, p.14.

usage and public disorder events in order to enhance Committee Members' understanding of the circumstances in which force has been used.¹⁰

The PSNI has supplied the Policing Board with this information for the first six months of 2009/2010. To ensure that this information continues to be supplied, I make the recommendation that when supplying the Policing Board with six monthly statistics on the use of force, the PSNI also provide details of any correlation between high incidents of usage and public disorder events.

Recommendation 11

When supplying the Policing Board with six monthly statistics on the use of force recorded on the electronic use of force monitoring form, the PSNI will provide details of any correlation between high incidents of usage and public disorder events.

Parades monitoring 2009

It is important to record here that the Policing Board's Human Rights Advisor's remit is to consider whether, overall, the policing operations complied with the requirements of the Human Rights Act 1998 and PSNI policy on policing public order events. Any complaints about individual officers are dealt with by the Police Ombudsman.

While strictly outside the formal reporting period, for completeness, I will make reference to parades which took place in the summer of 2009. This will be reported upon further in next year's Annual Report.

Between 1 June 2009 and 31 August 2009 there were 2,462 parades held throughout Northern Ireland and registered with the Parades Commission.¹¹ During the six month period 1 April 2009 to 30 September 2009, AEPs were fired on 14 occasions during two serious public disorder situations. The first situation occurred on 13 July 2009 in the Ardoyne area of North Belfast where

¹⁰ Letter from Northern Ireland Policing Board's Director of Policy to ACC Criminal Justice dated 22 September 2009.

¹¹ Data obtained from www.paradescommission.org.

13 officers fired a total of 24 AEPs. The second occurred on 31 August 2009 in Mountpottinger (East Belfast) where one officer fired a total of 6 AEPs. The public disorder in this incident was as a result of a sectarian interface arising from a gathering to celebrate the closure of Mountpottinger station.¹² Both incidents are currently being investigated by the Police Ombudsman. I will report further following the completion of those investigations.

Water cannons were deployed in nine separate incidents during the same six month period but were only used in one of those nine incidents on 13 July 2009 in Ardoyne.¹³ Batons were drawn and used on 184 occasions during the period, and a total of 91 of those occasions (49%) were during public order incidents.¹⁴ CS spray was drawn and sprayed on 184 occasions during the period, and a total of 65 of those occasions (35%) were during public order incidents.¹⁵ A police dog was used on 7 out of a total of 28 occasions (25%) at public order incidents during the period.¹⁶ No firearms or Taser devices were discharged at public order events during the period.¹⁷

I can report that I am satisfied that the policing operations in the relevant period, in respect of strategic, tactical and operational planning were comprehensive, robust and carried out within the legal framework. The human rights of all were taken into account, which included specific consideration of the rights of those engaged in the parade and their supporters, those protesting against the parades, the residents and police officers. I was particularly impressed by the careful and considered approach to un-notified protests and the proportionate response by PSNI officers attempting to balance and protect the competing interests of all involved. The PSNI displayed an ability to respond and to reconsider their response as the operations were proceeding. Their flexible and restrained approach should be commended.

¹² PSNI Use of Force Report No. 2, 1 April 2009 – 30 September 2009, pp. 4 – 8.

¹³ *Ibid.* p.33.

¹⁴ *Ibid.* pp.9 – 12.

¹⁵ *Ibid.* pp.14 – 17.

¹⁶ *Ibid.* pp.24 – 26.

¹⁷ *Ibid.* pp.19 – 22, and 28 – 31.

Parades Commission approach to marshals/stewards

In the 2008 Annual Report, it was reported that the Parades Commission was undertaking a review of determinations and in particular was to address any concerns over determinations dealing with marshals/stewards.¹⁸ I am pleased to report that significant progress has been made to clarify both the content of determinations and the approach to marshals/stewards. I have met with senior PSNI officers, including those involved in planning and control of parades, who agree that the situation has improved considerably with an open line of communication available to seek clarification of any determination. I will, however, continue to monitor and report upon the issue in next year's Annual Report.

PSNI alcohol strategy

The PSNI has developed a Northern Ireland wide alcohol strategy to tackle the misuse of alcohol, which pays particular attention to tackling the consumption of alcohol at public events. The PSNI applied that strategy during the summer of 2009, with officers targeting well known drinking hot-spots to enforce the Public Processions (Northern Ireland) Act 1998 and local council bye-laws. Between 1 June 2009 and 31 August 2009 the PSNI made a total of 2,009 separate alcohol seizures amounting to 14,201 items of alcohol.¹⁹ The PSNI continued to work with parade organisers to reduce the level of alcohol consumption in public places when a parade was taking place. Police officers also worked with other relevant partners, including Community Safety Partnerships who were responsible for organising the Summer Splash Scheme. The scheme provided diversionary activities for young people across Northern Ireland during the summer months of 2009.

¹⁸ 2008 Human Rights Annual Report, chapter 7, pp.121 – 122.

¹⁹ ACC Urban Region, presentation to Human Rights and Professional Standards Committee, 14 October 2009.

CHAPTER 8: USE OF FORCE

The use of force by police officers engages, in a direct and fundamental way, the rights enshrined in the European Convention on Human Rights (ECHR): Article 2 (the right to life), Article 3 (the right not to be subjected to torture, inhuman or degrading treatment), and Article 8 (the right to private and family life).¹ Police officers have the right to defend themselves from unlawful physical violence but also have a duty to protect others from harm. If a police officer does not take appropriate and proportionate action to protect others from harm, he or she may be violating that person's human rights. It is incumbent on every police officer to balance the rights of the individuals involved and it is in the use of force that their exercise of judgment must be most closely scrutinised. Respect for a person's human rights should be the central focus of all policing operations. It is a legal imperative under the Human Rights Act 1998 that the rights and freedoms guaranteed by the ECHR are protected.²

Police officers have express statutory powers, which may include authority to use force in prescribed circumstances. Any use of force must be in accordance with the law, necessary and proportionate. It must be within clearly defined boundaries. To ensure that each and every use of force is lawful the PSNI must first have a clear and accessible policy which provides comprehensive guidance to all officers. The legal framework for the use of force must clearly define the legal tests for the use of lethal and non-lethal force. Guidance must be supported and reinforced by effective and practical training and there must be effective mechanisms for both internal and external review of each use of force.

Any use of force, however moderate, has the potential to take a life or cause serious physical or mental injury to a person. The more vulnerable the person against whom the force is used, the greater is the risk of causing harm to that

¹ Which can encompass the physical, moral and psychological integrity of a person – *Botta v Italy* ECHR (Application No. 21439/93).

² By virtue of s.6 Human Rights Act 1998.

person. In addition to Articles 2, 3 and 8 ECHR a number of other Convention rights may be engaged depending on the particular circumstances. For example, Article 5 (the right to liberty and security of the person), Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression), Article 14 (the right not to be discriminated against) and Article 11 (freedom of assembly and association) may also be engaged.

On each occasion, a police officer considering the use of force must address the objectives of the operation, consider and re-consider whether the action proposed is pursuant to a legal power and that the use of force is necessary and proportionate. Furthermore, he or she must consider whether there is a less intrusive alternative available in the circumstances such as would limit the impact of the proposed action on the rights of the subject. It is an overarching consideration for all involved in an operation whether the operation has been planned so as to minimise, to the greatest extent possible, recourse to the use of lethal force.

It is critical therefore that the PSNI has in place mechanisms to ensure that police use of force is restrained and is only exercised in accordance with a regulatory framework that is kept under constant scrutiny. In this chapter I consider the various types of force that may be used lawfully by the PSNI and the policy framework within which such use operates. I will then consider the monitoring of the use of force by the PSNI.

USE OF FORCE POLICY FRAMEWORK³

PSNI policy on the use of force is largely contained within two Policy Directives: Public Order and the Use of Force⁴ and Police Use of Firearms.⁵ Together, these Policy Directives replicate the legal framework within which

³ PSNI policy and guidance is supplemented by ACPO/NPIA Manual of Guidance on the Management, Command and Deployment of Armed Officers, effective from 1 November 2009, which has been adopted by the PSNI.

⁴ PSNI Policy Directive 07/07, Public Order and the Use of Force (Including CS Incapacitant Spray, Batons, handcuffs and vehicle Mounted Water Cannon), 8 June 2006.

⁵ PSNI Policy Directive 12/08, Police Use of Firearms, 28 August 2008.

force may be used. They provide clear procedures and guidance on the use of force generally, and more specifically in relation to the use of CS incapacitant spray (CS spray), vehicle mounted water cannon, batons, handcuffs, limb restraints, public order dogs and firearms, including Attenuating Energy Projectiles (AEP). In addition, PSNI Guidelines on the Operational Use of Taser⁶ set out PSNI procedure and guidance on the use of Taser.

PSNI policy stipulates that any use of force must be restrained and proportionate to the legitimate objective to be achieved. This is also set out at sub-Article 4.3 of the Code of Ethics. A police officer is required to take steps to minimise any potential damage or injury to the person and must respect and preserve human life. This includes a positive obligation to ensure assistance and medical aid are secured as soon as possible and that relatives or close friends are notified at the earliest opportunity. Each use must be reported promptly to supervisors.⁷

Sub-Article 4.1 of the Code of Ethics states:

Police officers, in carrying out their duties, shall as far as possible apply non-violent methods before resorting to any use of force. Any use of force shall be the minimum appropriate in the circumstances and shall reflect a graduated and flexible response to the threat. Police officers may use force only if other means remain ineffective or have no realistic chance of achieving the intended result.⁸

The PSNI approach to the use of force is based upon the Conflict Management Model, which stresses that a careful use of words and the management of human interaction can resolve many situations. I wish to

⁶ PSNI Service Procedure 6/2008, Guidelines on the Operational Use of Taser, 21 January 2008 – to be read in conjunction with PSNI Policy Directives 07/07 and 12/08.

⁷ PSNI Code of Ethics, sub-Article 4.3; PSNI Policy Directive 07/07, s.2 (3); PSNI Policy Directive 12/08, s.2(1)(e); and Service Procedure 6/2008, s.3(2).

⁸ In accordance with Article 4 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

emphasise that a police officer must always consider resolving a situation without the use of force, if at all possible. That aspect of conflict resolution is iterated throughout police training and must be prominent in every officer's mind when faced with a scenario that will potentially result in the use of force. Force should always be the last rather than the first response to any situation.

If force is strictly necessary, the officer should consider the varying degrees of physical force required.⁹ To ensure that force is only used in appropriate circumstances, it is essential that there is adequate planning and control of situations where force may be used. PSNI policy does provide clear guidance on all operational aspects of such operations including in respect of command structures and post incident procedures. The policy has embedded within it the legal framework within which an officer must conduct him or herself and makes clear links to the relevant articles of the ECHR. To be effective, that policy must be translated into practice, which will only be achieved if operational planning and briefings make explicit the legal boundaries for any use of force.

PSNI policy is reflective of a 'graduated and flexible response to the threat',¹⁰ with a stronger justification required for using force, which is lethal or potentially lethal. It cannot be overstated that lethal or potentially lethal force may only be lawfully used where it is *absolutely* necessary to do so and in pursuit of a specified aim, which by the laws of the United Kingdom must be to protect the lives of others.¹¹ For example, a firearm may only be used where the officer honestly believes the use is absolutely necessary in order to save life or prevent serious injury.¹²

The Independent Commission on Policing for Northern Ireland (the Patten Commission) reported in 1999.¹³ It recommended that research be

⁹ PSNI Policy Directive 07/07, s. 3(c).

¹⁰ In accordance with sub-Article 4.1 of the PSNI Code of Ethics.

¹¹ *Ibid.*, s.3(2)(d)(aa) and PSNI Policy Directive 12/08, s.3(2)(f)(iii)(aa).

¹² Unless the discharge is for training purposes or the human destruction of animals – PSNI Policy Directive 12/08, s.2(f) and sub-Article 4.4 Code of Ethics.

¹³ *A New beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999.

undertaken into the development of less lethal alternatives to the use of firearms. In response, the Northern Ireland Office established a Steering Group to examine alternative policing approaches to conflict management, including less lethal technologies. A number of less lethal technologies have subsequently been introduced by the PSNI: Attenuating Energy Projectiles (AEPs), Taser, water cannon and CS spray. Their introduction has been reported on in detail in previous Human Rights Annual Reports (the Annual Reports). The Home Office now leads on the research into less lethal technologies and the Policing Board continues to have an involvement in the work of the Steering Group in an observer capacity.

I am pleased to note that the Public Order and Use of Force policy has been updated since last year's Annual Report to co-ordinate with the Use of Firearms policy. The revised policy now requires that officers give special consideration to the heightened vulnerabilities of children and members of other vulnerable groups in relation to the use of force. They must take cognisance of the United Nations Convention on the Rights of the Child (UNCRC), which requires the best interests of the child to be a primary consideration in all operations concerning children.¹⁴

LESS LETHAL TECHNOLOGIES

As noted in previous reports, the use of equipment such as AEPs, Taser, water cannon and CS spray is not incompatible with the ECHR *per se* but strict guidelines must be applied for use. Over the course of the last two Annual Reports the concerns of agencies representing the interests of children have been noted and in particular their opposition to the use of AEP and Taser on children and young people. Their concerns remain despite the revision of PSNI policy and guidelines. While the concern is understandable and shared by the Policing Board, the PSNI is required to comply with the law

¹⁴ PSNI Policy Directive 07/07, s. 3(2)(g) and PSNI Policy Directive 12/08, s.3(3)(i). Similar wording is contained in PSNI Service Procedure 6/8008, Guidance Notes, paras.10.7 and 10.8.

including the Human Rights Act 1998. That is the framework within which the Service must operate and against which it must be judged.

It has been recorded, and I re-state, that neither the ECHR nor the Human Rights Act 1998 necessarily prohibit the use of force (whether lethal or non-lethal) against children or young people. However, there can be no doubt that the impact of force on a young person can be more acute than on an adult and that the UNCRC requires that the interests of the child are paramount. PSNI policy is now strict in this regard. It explicitly requires that “every effort must be made to ensure that children or members of other vulnerable groups are not placed at risk... particularly relevant in public order situations”.¹⁵ That is very welcome.

Attenuating Energy Projectile (AEP)

The AEP discharges less-lethal kinetic energy projectiles (impact rounds). It can only be used by a limited number of specially trained PSNI officers. The AEP may never be used other than in relation to an identified targeted individual. An AEP can never be fired *lawfully* into a crowd or *as a means of* crowd control. The deployment and thereafter the use of AEP, while it is considered a less lethal option (than conventional firearms), still has potential to seriously injure or kill if not used strictly in accordance with the guidance. The deployment and use of AEP must be considered within the terms of the Conflict Management Model.¹⁶

AEP may only be discharged, whether at a public order incident or otherwise, where other methods of policing have been tried and failed, or where it is clear from the circumstances that it would be likely to fail if tried. The use of AEP may only be used lawfully if it is absolutely necessary to do so to reduce a serious risk of loss of life or serious injury or substantial and serious damage to property, which is likely to cause or is judged to be likely to cause a serious risk of loss of life or serious injury.¹⁷

¹⁵ PSNI Police Directive 12/08, s.7, para.5(4)(c).

¹⁶ *Ibid.* s.7, para. 3(5)(g)(i).

¹⁷ *Ibid.* s.7, para. 5(5)(a) and 6(7)(b).

Importantly, when making a decision to authorise AEP, commanders are required to give consideration to the possibility that children or members of other vulnerable groups may be present and to record in their logs the grounds for the decision to authorise issue, deployment and use of AEP. The AEP System Commander must conduct a dynamic risk assessment regarding the presence of children and members of other vulnerable groups before authorising deployment and use of AEP.

The Police Use of Firearms policy recognises that while the discharge of an AEP provides a less lethal alternative to conventional firearms, “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. This is particularly relevant in public order situations where such persons may be amongst a crowd and be placed in danger should an AEP miss its intended target.”¹⁸ There is also the general requirement in the policy, as mentioned above, that when contemplating resort to the use of force, officers must give special consideration to the heightened vulnerabilities of children and take cognisance of the UNCRC. This is an important element of the policy and must be emphasised during training and operational briefings.

In the 2008 Annual Report, it was recommended that the AEP policy should be amended to include guidance reflecting that, “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.”¹⁹ The same amendment had previously been considered but rejected by the PSNI for a number of reasons.²⁰ The PSNI, in rejecting the recommendation in the 2008 Annual Report, has stated that it recognises its responsibilities to all members

¹⁸ *Ibid.*, s.7, para. 5(4)(c).

¹⁹ Recommendation 22, 2008 Human Rights Annual Report, p.135.

²⁰ 2008 Human Rights Annual Report, chapter 8, p.134.

of the public and that the current policy requires the best interests of children to be a primary consideration in all actions concerning children.²¹

I appreciate that a number of stakeholders have raised concerns over the use of AEP by the PSNI against children. Although AEP were not discharged against children during this reporting period (1 April 2008 – 31 March 2009), there were three incidents recorded of an AEP being used against minors²² during the first half of 2009/10.²³

It is clear that the use of an AEP, in the strictly controlled circumstances set out above, is not contrary to the ECHR. However, that is only the case if its use is *absolutely necessary* to reduce a serious risk of loss of life or serious injury.²⁴ This is an objective standard regardless of the age of the person against whom the AEP is used. The test is the same whether that person is an adult or a child. However, police officers must be mindful of the heightened risk of using an AEP against a child and the particular vulnerabilities of children. The more vulnerable a person, the more vigorous must be the assessment of risk. When considering whether use of AEP is absolutely necessary, and therefore whether the legal threshold has been met, it is relevant to consider the age and physical stature of the person against whom it may be used. For example, a very young child holding a firearm may be unlikely to be able to fire it and it is therefore unlikely to be necessary to use AEP against that child. The purpose of recommendation 22 of the 2008 Annual Report was to recognise that. However, I accept that the wording of the recommendation may be unhelpful and incapable of translation into practice. It may, in fact, result in a diminution of the test with different tests being applied on a sliding scale according to the perceived age of the subject. What is important is that the use of AEP against children is strictly controlled and is never used unless, and until, it is absolutely necessary to prevent risk to life or serious injury.

²¹ PSNI Human Rights Programme of Action 2008-2009, p.11.

²² All aged approximately 17 years old.

²³ PSNI Use of Force Report, 1 April 2009 – 30 September 2009.

²⁴ Or substantial and serious damage to property, which is likely to cause or is judged to be likely to cause a serious risk of loss of life or serious injury.

It should be noted that the age of a person does not determine whether the legal threshold for use of force against him or her has been met, however, the assessment of risk may be affected as will the likely impact of the use on that person. If, for example, one child is endangering the life of another child it cannot be said that use of AEP is prohibited *because* the perpetrator is a child. In this context, one must remember that the law does not prohibit the use of conventional firearms. To include within guidance a provision which requires a police officer to make a subjective assessment of age below which AEP can never be justified²⁵ is to confuse the test and may actually create a situation where a child is placed in greater danger. That being said, the PSNI must use every means possible to ensure that training is comprehensive, practical and reinforces the special protection all children require.

PSNI training emphasises the vulnerability of certain groups including children. AEP policy requires officers to give special consideration to the heightened vulnerabilities of children and other vulnerable groups. Officers must retrain twice a year in order to be qualified to use an AEP. I have observed revised AEP training and am satisfied that it stresses the peculiarly vulnerable position of children and that force must only be used against a child as a last resort. In my view, the answer to this most difficult issue is to concentrate on the training delivered to officers and the practical explanation of the legal test together with close after the event scrutiny of each use. Scenario based training should include specifically those situations in which children may be involved and should refer specifically to the UNCRC and the various factors relevant to use of force against a child.

Accordingly, recommendation 22 of last year's Annual Report is withdrawn. I make the new recommendation that the PSNI should work with the Human Rights Advisor, who will report directly to the Human Rights and Professional Standards Committee on progress, to review AEP training materials and lesson plans to ensure sufficient safeguards in respect of children. In doing

²⁵ As contained within recommendation 22, 2008 Human Rights Annual Report, p.135.

so, I will consult further with those agencies representing the interests of children. Within that programme of work I will consider a form of words which may both accurately reflect the special vulnerability of children and can be translated into practical scenario-based training.

Recommendation 12

The PSNI should work with the Human Rights Advisor to the Policing Board to conduct a further review of all training manuals and lesson plans and address specifically the interests of the child in any operation which may involve the use of force. The PSNI should, following completion of the review, but in any event within six months of the publication of this report, present its findings to the Policing Board's Human Rights and Professional Standards Committee.

Thereafter, the Human Rights and Professional Standards Committee will, over the course of the next 12 months, review each incident where AEP is used against a child and consider any recommendations that are required. This is separate from the investigation carried out by the Police Ombudsman in each individual case of the use of AEP. It will concentrate on any lessons to be learned and policy or training considerations that arise. I appreciate that an internal evaluation has already been carried out and that the PSNI report the greater importance attached to the UNCRC in training on AEP. The trainer now makes specific reference to material provided by UNICEF. That is a welcome development but in recognition of the heightened vulnerability of children and the critical nature of this training, I propose to continue this year with a refreshed review and reconsideration of the training.

In last year's Annual Report, it was recommended that the PSNI internal evaluation team should evaluate the AEP initial and refresher training courses and report its findings to the Policing Board.²⁶ That evaluation has been carried out.²⁷ Furthermore, I have attended and observed the revised AEP

²⁶ Recommendation 23, 2008 Human Rights Annual Report, p.136.

²⁷ Report dated 16 November 2009 by the PSNI Human Rights Legal Advisor.

training. I am therefore satisfied that recommendation 23 of the 2008 Annual Report has been implemented in full.

Taser²⁸

The Taser is a single shot weapon designed to temporarily incapacitate a subject through the use of an electric current, which temporarily interferes with the body's neuromuscular system. Taser is one of a number of tactical options available to an officer who is faced with an incident which is escalating to the point where the use of lethal force would be justified. Where appropriate to the circumstances of each incident, Taser is preferred to conventional firearms and is considered to be a less lethal option. However, Taser has been classified as potentially lethal, which has an impact on the legal test for use. According to PSNI policy and guidance its use "will be justified where the officer honestly and reasonably believes that it is necessary in order to prevent a risk of death or serious injury."²⁹

The test for use of Taser "is set at a slightly lower threshold than that for the use of lethal force, which requires an honest belief that such use is absolutely necessary to prevent death or serious injury. It is intended to cover a situation where an officer honestly believes that a situation is in immediate danger of escalating to a point where the use of lethal force will be required."³⁰ Guidance on the use of Taser recognises that the, "test is novel in that it predicates the use of Taser upon a potential or actual justification for the use of firearms. In effect, an officer must consider whether s/he is imminently likely to be forced to use lethal force and assess the lawfulness of any use of Taser by reference to this."³¹ To ensure that this test is always applied in practice the PSNI should consider amending the test so that it is clearer that the officer must consider it immediately necessary to use Taser to prevent or reduce the likelihood of recourse to lethal force (e.g. conventional firearms).

²⁸ The PSNI uses the X26 Taser device.

²⁹ PSNI Service Procedure 6/2008, Guidance Notes, para.10.3.

³⁰ *Ibid.* Guidance Notes, para.10.4.

³¹ *Ibid.* Guidance Notes, para.10.4, footnote 3.

Recommendation 13

The PSNI should consider amending Service Procedure 6/2008, Guidance Notes, paragraph 10.3 to make clear that use will be justified where the officer honestly and reasonably believes that it is immediately necessary to use Taser to prevent or reduce the likelihood of recourse to lethal force.

I accept that the policy and guidance as currently drafted, when read together, do require the use of Taser to be linked to the prevention of recourse to use of lethal force but the wording should be made explicit. I have not applied a time limit within which to respond to this recommendation because the High Court in Belfast is due to rule on the issue and further consideration will be given to all of the issues following the delivery of the court's judgment.

Taser devices were issued to Special Operations Branch officers for the purposes of a time-limited pilot in January 2008. The Taser Service Procedure, Police Service of Northern Ireland Guidelines on the Operational Use of Taser, was issued in line with ACPO guidance, and as reported in last year's Annual Report, the Policing Board was satisfied³² that it complied with the Human Rights Act 1998.³³ Any subsequent updates to the policy, any new medical or other scientific guidance³⁴ or developments on the use of Taser, have been, and will continue to be, kept under review by the Policing Board. The PSNI also monitor national developments on the use of Taser via their representation on the UK Steering Group and ACPO working groups.

The final report of the Equality Impact Assessment (EQIA) of the use of Taser by specialist and authorised firearms officers was published in November 2008.³⁵ The EQIA was informed by a range of relevant information; pre-screening consultation exercises carried out by the Policing Board in March 2006 and the PSNI in September 2006; pre-consultation meetings; and a

³² By a majority vote.

³³ 2008 Human Rights Annual Report, chapter 8, p.143.

³⁴ For example, the revised guidance issued by Taser International on aiming of the device.

³⁵ PSNI Equality Impact Assessment, Final Report, Proposals to Introduce Taser, November 2008.

formal consultation exercise between January and April 2008. The EQIA found that there were potential adverse impacts on a number of section 75 groups³⁶ including people from black and minority ethnic groups; children and young people; pregnant women; people with poor mental health; people with heart problems or who wear a pacemaker; people with epilepsy; and people with hearing loss.

The Chief Constable considered the findings of the EQIA in October 2008. Consideration was given to the introduction of alternative policies and ways of mitigating potential adverse impact on section 75 groups. The Chief Constable took the decision to issue Taser on a permanent basis to officers from Special Operations Branch and to also make them available to officers attached to Armed Response Vehicles who have completed ACPO approved accredited training in the use of the device. This decision included incorporating into the Taser Service Procedure, and into Taser training, a table of actions to mitigate the impact of Taser on those groups identified as vulnerable. The PSNI are continuing to monitor any discharge of Taser against section 75 categories and all use of Taser is automatically referred to the Police Ombudsman.

In a survey conducted in the course of a PSNI post implementation review of the pilot, officers from Special Operations Branch provided a positive response in relation to the compatibility and operational effectiveness of Taser along with less lethal options. In the vast majority of cases they agreed or strongly agreed that the policy and guidance approved for the pilot was clearly written, easily understood, clearly explained in training and that the “test for the use of Taser was capable of being applied in an operational setting.”³⁷ I have observed initial and refresher training on the use of Taser and am satisfied that it is comprehensive, robust and effectively incorporates human rights principles.

³⁶ Section 75 of the Northern Ireland Act 1998 requires public authorities to have due regard to the need to promote equality between a range of specified groups, and have due regard to the desirability of promoting good relations between persons of differing groups.

³⁷ PSNI Pilot on the Limited Introduction of Taser to the PSNI, Post Implementation Review.

The introduction of Taser by the PSNI has not been without challenge. The decision to introduce Taser to Northern Ireland has been judicially reviewed. The outcome of the judicial review is still awaited. The Policing Board monitors Taser policy and use on an ongoing basis and will continue to work with interested parties to address their concerns.

Water Cannon

The PSNI has six water cannons at its disposal which are kept at different police locations within Northern Ireland to ensure that they can respond quickly to any incident. Water cannons can discharge water in a variety of modes and are equipped with a public address system, distinctive audible sirens and blue flashing lights. They are also equipped with video cameras mounted beside each cannon, behind the front windscreen and on a telescopic mast mounted to the rear of the cab. Water cannons are deployed and used only when properly authorised by appropriate officers and in accordance with guidance provided by ACPO.³⁸

Water cannons were deployed on six occasions between 1 April 2008 and 31 March 2009 but water was not sprayed during any of those deployments.

CS Incapacitant Spray

CS incapacitant spray (CS spray) is an irritant dispensed from a hand held aerosol canister in a liquid stream which contains a 5% solution of CS in the solvent Methyl Isobutyl Ketone. It is issued to officers who have been trained in the Personal Safety Programme and is worn as part of the normal patrol equipment. Plain-clothed officers are also trained and issued with CS spray.

CS spray is personal protection equipment. It should not be used during serious public disorder as a crowd dispersal tactic but it may be used against:

³⁸ PSNI Policy Directive 07/07, s.7, para.9 (12).

1. Those offering a level of violence, which cannot be appropriately dealt with by other levels of force; or
2. Violent offenders, other than those armed with firearms or similar remote injury weapons, where a failure to induce 'immediate' incapacitation would increase risks to all present.³⁹

Upon impact, the solvent evaporates rapidly leaving CS particles to incapacitate the subject, with effects lasting approximately 20 minutes. A person who has been sprayed with CS spray will be classified as 'injured' and police officers will administer aftercare advice.

Since 2005, the PSNI has provided statistics to the Policing Board of incidents involving the deployment and use of CS spray. Those figures have been reported in each subsequent Human Rights Annual Report. Prior to the creation of the new electronic use of force reporting system in 2008, CS spray data was based on a paper form completed by officers. However, as the information is now collated and recorded using the electronic use of force monitoring form, which uses a slightly different method of counting than the previous paper form, the information the Policing Board has been provided with on the deployment and use of CS spray for 2008/2009 cannot be directly compared with the figures from previous years. The information provided for this year is set out in detail below and from next year onwards I will return to analysing the use of CS spray, and all other categories of use of force, on a year to year basis.

³⁹ *Ibid.* s.7, para.8 (7).

ARMED RESPONSE VEHICLES

Armed Response Vehicles (ARVs) were introduced by the PSNI on 19 December 2008. An ARV is a patrol car normally crewed by three officers, which enables firearms trained officers to respond to spontaneous firearms incidents. The objectives of the ARV crew are:

1. To provide an immediate armed response to appropriate incidents with the ability to use firearms and less lethal options if justified; and
2. Where appropriate, to provide containment pending the arrival of other firearms support unless exceptional circumstances necessitate immediate action to save life or to prevent harm or injury to any person.

ARV officers have received extensive training in tactics including dealing with armed individuals in vehicles, buildings or in open spaces. They are also specially trained to use an AEP or Taser where justified in the circumstances.

MONITORING THE USE OF FORCE

As previously noted the use of force by police officers must be kept under regular review to ensure that each use is lawful, proportionate and justified in the circumstances. It is not enough to simply ensure that police policy on the use of force is human rights compliant – the way in which force is actually used by officers must also be monitored on an individual, case by case, basis.

Since January 2008, the PSNI has collected its data on particular types of force used by officers by means of an electronic use of force monitoring form. Following a successful pilot scheme in 2007, the single online form was introduced in an effort to simplify reporting obligations, reduce bureaucracy, quicken submission time and improve the quality of information collated on

the use of force.⁴⁰ The use of force electronic database is considered in greater detail below.

In addition to completing the electronic use of force monitoring form, officers are required to observe the usual post incident procedures following a use of force. This includes reporting the incident promptly to their supervisors, which is then reviewed internally, where appropriate.⁴¹ Sub-Article 1.9 of the Code of Ethics states:

Police officers shall ensure that accurate records are kept of their duties as required by relevant Codes of Practice and Police Service policy and procedure. Police officers shall not through neglect make any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for police purposes. Nor shall they omit to make any oral or written statement or entry in any such record or document. They shall not, through lack of care, alter, deface, erase, conceal or destroy any record or document, kept or made in connection with any police activity.

A Taser Evaluation Form must be completed and sent to ACPO for every use of Taser, even if Taser is only drawn and/or sighted but not discharged.⁴² Promptly after the discharge of an AEP, or following a public disorder incident, District Commanders are required to submit a report to the Policing Board.⁴³

Where a firearm, an AEP or a Taser has been discharged, the Police Ombudsman must be informed immediately, irrespective of whether a complaint has been made. The Ombudsman is required to carry out a thorough investigation which will include not only the circumstances of any injury to, or death of, any person who may have been affected, but also the

⁴⁰ Letter from ACC Operational Support to the Policing Board's Chairman dated 25 January 2008.

⁴¹ PSNI Policy Directive 07/07, s.2 (3)(e) and (f).

⁴² PSNI Service Procedure 6/2008, s.8 (5)(c).

⁴³ PSNI General Order 50/02, Requirement for early reporting to the NI Policing Board Police Discharge of Attenuating Energy Projectiles (impact rounds) – Form Policing Board 1 (PB1) Incidents of Public Disorder – Form Policing Board 2 (PB2).

circumstances leading up to the discharge and all surrounding issues such as the management of the incident and planning of the operation.⁴⁴ Where Taser has been drawn, or aimed at a subject (as opposed to being discharged), the Ombudsman must be notified, but he will usually only investigate if a complaint is made.⁴⁵ Furthermore, in any other situation where a police officer has used force it may also be the subject of a Police Ombudsman investigation regardless of whether or not a complaint has been made.⁴⁶

At the conclusion of an investigation by the Police Ombudsman, a report (a Regulation 20 report), is sent to the Secretary of State, the Policing Board and the Chief Constable. There were ten regulation 20 reports issued between 1 April 2008 and 31 March 2009. Of those ten regulation 20 reports, two involved the discharge of CS spray, one the discharge of a firearm, one the use of force when a police officer threw his weapon at a motorcyclist who had accelerated away from a police vehicle, and one the use of force by a police officer on a person who was detained in police custody.⁴⁷ Each of those regulation 20 reports is analysed in greater detail in chapter 6 (Complaints, Discipline and Civil Actions).

Each officer who uses force is individually responsible for his or her own actions and is answerable not only to the PSNI and the Police Ombudsman, but ultimately in law for his or her own actions. Obedience to the orders of a supervisor is no defence for breaking the law if a police officer knew that the order to use force was unlawful and had a reasonable opportunity to refuse to obey it. Responsibility will also rest with the supervisor who gave the unlawful order.⁴⁸

⁴⁴ PSNI Policy Directive 12/08, s.3 (9)(b).

⁴⁵ PSNI Service Procedure 6/2008, Guidance Notes, paras.14.4 and 14.5.

⁴⁶ As he can also investigate matters referred to him by the Policing Board, the Public Prosecution Service, the Chief Constable, or matters of his own volition, Police (Northern Ireland) Act 1998, s.55.

⁴⁷ As each incident requires thorough investigation, there is commonly a time lag between the date of the incident and publication of the report.

⁴⁸ PSNI Policy Directive 07/07, s.3(3) and PSNI Policy Directive 12/08, s.3(3).

Use of force electronic database

As noted above, the PSNI collects data on particular types of force used by officers by means of a single online electronic use of force monitoring form.

The form is the reporting mechanism for the following types of force:⁴⁹

- (i) AEP;
- (ii) Baton (drawn but not used);
- (iii) Baton (used);
- (iv) CS Spray (drawn but not used);
- (v) CS Spray (used);
- (vi) Police Dog;
- (vii) Firearms (drawn and/or pointed but not used);
- (viii) Firearms (used);
- (ix) Water Cannon;
- (x) Taser;⁵⁰ and
- (xi) Shield used against individual.⁵¹

Any incident that involves use of force by an officer, other than those listed above, is not recorded on an electronic use of force form but must be reported to the officer's supervisor and recorded in their notebook. This would include, for example, unarmed skills and/or use of handcuffs.⁵²

I am pleased to report that the PSNI has accepted the recommendation contained in the 2008 Annual Report that they should provide the Policing Board with statistics on all categories of uses of force recorded on the electronic use of force monitoring system on a six monthly basis.⁵³ I therefore consider recommendation 21 to be implemented in full. In fulfilling this

⁴⁹ PSNI Policy Directive 07/07, s.13(1)(b).

⁵⁰ Since last year's Human Rights Annual Report, Taser has been added as a new category of force to be recorded on the electronic use of force monitoring form.

⁵¹ Shield used against individual was also added as a new category of force to be recorded on the electronic use of force monitoring form.

⁵² PSNI Policy Directive 07/07, s.13(1)(d).

⁵³ Recommendation 21, 2008 Human Rights Annual Report, p.132, and PSNI Human Rights Programme of Action 2008 – 2009, p.11.

recommendation, the PSNI has supplied the Policing Board with a report on the use of force for the period 1 April 2008 to 31 March 2009.⁵⁴ The PSNI has confirmed that they will continue to provide the Policing Board with six monthly reports on the use of force. That was the intention of the recommendation.

Using the data contained in the PSNI report, Table 1 below shows the total number of incidents, per category of force, as recorded on the electronic use of force monitoring system between 1 April 2008 and 31 March 2009.

Table 1: Use of force, 1 April 2008 to 31 March 2009

Type of force	Total use
AEP (pointed but not discharged)	13
AEP (discharged)	3
Baton (drawn but not used)	551
Baton (used)	535
CS Spray (drawn but not used)	176
CS Spray (used)	382
Police Dog	21
Firearms (drawn or pointed but not discharged)	267
Firearms (discharged)	0
Water Cannon (deployed but not sprayed)	6
Water Cannon (sprayed)	0
Taser (drawn, aimed, sighted)	30
Taser (discharged)	5

For each category of force, the PSNI report provides a breakdown of the reason for the use of force, the location of the use, the use per District and per Area, the incident type, the type of police activity and, where a weapon was actually discharged / drawn and used / sprayed, the gender and age of the member of the public against whom the force was used. The remainder of this chapter provides a summary of the statistics from the PSNI report for each category of force.

⁵⁴ PSNI provided some information in the report relating to Taser, despite the inclusion of Taser in the use of force database only commencing in December 2008. Prior to this date a separate form was completed by specialist firearms officers for each use of Taser. However, information was not included in the report on incidents where a shield was used against an individual – it was only in the 3rd revision of Policy Directive 07/07, issued on 9 April 2009, that this category of force was included within the electronic use of force reporting framework.

Attenuating Energy Projectiles (AEP) statistics⁵⁵

'Use' of an AEP for the purposes of the electronic monitoring form includes all occasions where an AEP has been pointed at a subject but not discharged.

Of the 16 uses of AEPs between 1 April 2008 and 31 March 2009, three resulted in an officer discharging the AEP. All three occurred in a single firearms incident that took place in Castlereagh during November 2008, and all three were discharged against one male over the age of 60 years old. AEPs were not used (pointed or discharged) in any serious public disorder situations between 1 April 2008 and 31 March 2009. The primary reason given by officers for the use of AEP was to protect other officers (88%). The second reason most frequently given was for the officer's own protection (81%) and thirdly to protect the public (69%). Firearms incidents accounted for 12 of the 16 uses of AEPs.

Baton statistics⁵⁶

'Use' of baton for the purposes of the electronic monitoring form includes where a baton has been drawn but not used where it would have been reasonable to expect that a person (or persons) anticipated a threat of force.

On occasions where a supervisory officer gives a direction to officers to draw their batons (which would most likely occur during serious public order situations) only the officer giving the direction is required to complete an electronic use of force monitoring form. However, if any officer has occasion to strike an individual(s) he or she must submit an electronic use of force monitoring form to indicate that the baton was used. On 14 occasions during 2008/2009 a supervisory officer directed officers to draw their batons but these are not included in the batons drawn statistics.

Batons were drawn, or drawn and used, on 1,086 occasions between 1 April 2008 and 31 March 2009. Of the 535 occasions where the baton was drawn

⁵⁵ PSNI 2008/2009 Use of Force Report, pp.5 – 7.

⁵⁶ *Ibid.* pp.9 – 12.

and used, 413 were against males aged 18 to 29 years old. The main reasons officers gave for the 1,086 occasions of use were to protect themselves (78%), to protect other officers (61%), and to prevent an offence (51%). 575 out of 1,086 uses were during public order incidents, and of those 575 uses, batons were drawn and used on 266 occasions. South Belfast recorded the highest level of baton use with batons being used on 108 occasions.

Use of police dog statistics⁵⁷

Officers reported the use a police dog on 21 occasions between 1 April 2008 and 31 March 2009 against 22 members of the public, 19 of whom were males aged 18 – 29 years old. 13 of the 22 members of the public were bitten by the dog. The main reasons officers gave for the 21 occasions of use were to protect themselves (81%), to protect other officers (48%), and to effect an arrest (48%). The highest incidence of use of police dogs was in B District,⁵⁸ where 15 uses were reported.

Use of firearms statistics⁵⁹

There were no operational occasions when an officer discharged his or her firearm between 1 April 2008 and 31 March 2009, although there were 267 occasions when a firearm was drawn or pointed but not fired during this period. The main reasons officers gave when firearms were drawn or pointed was to protect themselves (94%), to protect other officers (83%), and to protect the public (64%). The highest incidence of use of a firearm was recorded in A District,⁶⁰ where a firearm was drawn or pointed on 61 occasions.

Use of water cannon statistics⁶¹

Water cannon was deployed on six separate occasions between 1 April 2008 and 31 March 2009, but none resulted in the water cannon being used (i.e. water was not sprayed). Detailed information regarding the location and

⁵⁷ *Ibid.* pp.24 – 26.

⁵⁸ East and South Belfast.

⁵⁹ PSNI 2008/2009 Use of Force Report, pp.19 – 22.

⁶⁰ North and West Belfast.

⁶¹ PSNI 2008/2009 Use of Force Report, p.32.

reason for deployment of the water cannon is not available as the PSNI report only records when water cannon has been used.

Use of Taser statistics⁶²

'Use' of Taser for the purposes of the electronic monitoring form includes all occasions when Taser was drawn⁶³ without the Taser being discharged.

Between 1 April 2008 and 31 March 2009 Taser was drawn on 30 occasions and on a further five occasions Taser was drawn and discharged. The highest incidence of use of Taser was in A District⁶⁴ where it was drawn on ten occasions and discharged on a further two occasions. Of the five occasions when Taser was discharged, two were against a male(s) aged 18-29 years old, two against a male(s) aged 30-39 years old and one against a male aged 40-49 years old.⁶⁵

As Taser has only been included in the use of force database since December 2008, the PSNI was unable to provide any further, more detailed, information on the use of Taser during the relevant reporting period. When that information is available, I will report to the Human Rights and Professional Standards Committee. In next year's Annual Report I will be considering whether and if so what recommendations are required.

Use of CS spray statistics⁶⁶

'Use' of CS spray for the purposes of the electronic monitoring form includes all occasions when CS spray was drawn, but not sprayed, at a subject.

There were 176 occasions between 1 April 2008 and 31 March 2009 when CS spray was drawn and a further 382 occasions when it was drawn and sprayed. Those 382 occasions resulted in 479 incidents of persons being

⁶² *Ibid.* pp.28 – 30.

⁶³ Includes drawn, aimed or red-dot sighted on a subject.

⁶⁴ North and West Belfast

⁶⁵ The statistics do not provide a unique count of the number of persons against whom force was used as force may be used by more than one officer against one individual.

⁶⁶ PSNI 2008/2009 Use of Force Report, pp.14 – 17.

sprayed.⁶⁷ In 57% of those 479 persons sprayed, CS spray was used against males aged 18 – 29 years old. 35 people reported receiving injuries during the incident (not necessarily as a result of police force). The highest incidence of the use of CS spray was in G District⁶⁸ where CS spray was sprayed on 80 occasions and drawn on a further 44.

Of the 382 occasions when CS spray was drawn and used 143 (37%) related to public order incidents and 107 (28%) related to incidents involving an assault. The main reasons officers gave for the 558 occasions of use were to protect themselves (87%), to protect other officers (68%), and to effect an arrest (52%).

The 2008 Annual Report recorded that recommendation 25 of the 2007 Annual Report remained outstanding.⁶⁹ That recommendation required the PSNI to assign responsibility internally for reviewing all uses of CS spray annually, and for issuing guidelines on best practice to police officers, and to provide the Policing Board with a summary of the findings and conclusions of its annual internal review. The 2008 Annual Report acknowledged that the introduction of the electronic use of force monitoring form provided the PSNI and the Policing Board with additional information on the use of CS spray, and that the revised Use of Force Policy requires District Commanders to review each use of CS spray. However, it is recorded that the electronic use of force monitoring form, and the revision to the Use of Force Policy, was sufficient to satisfy the intention of the 2007 recommendation.⁷⁰

The PSNI response in its Human Rights Programme of Action 2008 - 2009 has been to restate its position; given that each use of CS spray is now recorded on the electronic use of force form, and that District Commanders review each use of CS spray, an internal review would be duplication and incur additional costs. The PSNI has indicated that there will be a post

⁶⁷ An officer might spray more than one person at a time. The 479 incidents of persons being sprayed does not mean 479 persons were sprayed as more than one officer could have sprayed the same individual during an incident.

⁶⁸ Foyle, Limavady, Magherafelt and Strabane.

⁶⁹ Recommendation 25, 2007 Human Rights Annual Report, p.164.

⁷⁰ 2008 Human Rights Annual Report, chapter 8, pp.141 – 142.

implementation review of the electronic use of force form and that the recommendation may be reconsidered depending on the outcome of this review.⁷¹

By regular analysis of the use of force monitoring form provided to the Policing Board, the PSNI has indicated that it will be able to track and trend *all* uses of force (which will therefore include the use of CS spray and Taser). This will satisfy the intention of recommendation 25 of the 2007 Annual Report which I therefore withdraw. For the avoidance of doubt, I make the new recommendation that the PSNI should, using the electronic use of force monitoring form, carry out an annual review of all uses of force and report to the Policing Board on an annual basis with its findings. The report should track and trend the use of force across all PSNI Districts and consider what steps are taken to address any issues arising.

Recommendation 14

The PSNI should, using the electronic use of force monitoring form, carry out an annual review of all uses of force and report to the Policing Board with its findings. The report should track and trend the use of force across all PSNI Districts and consider what steps are taken to address any issues arising. The first report should be provided to the Policing Board within six months of the publication of this report.

In all other respects I am satisfied with the level of monitoring of police use of force. The Policing Board will continue to review the six monthly statistics provided by the PSNI on all categories of use of force recorded on the electronic use of force monitoring system, and any concerns will be dealt with as they arise and reported upon in next year's Annual Report.

⁷¹ PSNI Human Rights Programme of Action 2008 – 2009, p.19.

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.

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. I have examined the Surveillance Commissioner's 2009 report and the PSNI's response to it. I have also examined the 2009 report of Her Majesty's Inspector of Constabulary. I also report on the status of the PSNI's implementation of the recommendations in the Police Ombudsman's Operation Ballast Report.¹

POLICIES AND PROCEDURES

Following 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 therefore decided to review all current PSNI intelligence policies and procedures and all protocols and procedures between PSNI and external agencies. The review measured policies, procedures and protocols against legislation (including the Human Rights Act 1998) and ACPO guidelines. The PSNI intends to develop an overarching policy on the management of intelligence (including collection and dissemination) to contain all relevant procedures and guidance on police

¹ *Statement by the Police Ombudsman for Northern Ireland on her Investigation into the circumstances surrounding the death of Raymond McCord Junior and related matters ('Operation Ballast Report')*, Police Ombudsman Nuala O'Loan, January 2007.

intelligence work. To achieve that, the PSNI established a Policy and Performance Unit with responsibility for the development of the policy. The PSNI Human Rights Legal Adviser is involved in the review process.

In the 2008 Human Rights Annual Report (the Annual Report), it was recommended 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 the report but should report to the Policing Board on the progress of its review within six months of the publication of the report.²

A substantive review has been carried out on all policies and procedures in relation to intelligence management and these have been updated where necessary. There is a practical impediment to finalisation of an overarching policy, which is the need to integrate the policy into relevant information technology systems. The implementation of the policy is suspended pending implementation of the IT system. In particular, for the overarching policy to be effective it must contain links to the various related policies and procedures. Most of these have been implemented or are to be implemented very shortly. The review and overarching policy is an important process and indicates a real commitment by the PSNI to ensure that policy and practice is human rights compliant. By way of example, the Covert Human Intelligence Source (CHIS) manual has been completed and is due to be signed off and the source management policy has been completed.

On that basis, recommendation 24 of the 2008 Annual Report has been implemented in part but I recognise the imminence of its full implementation. I therefore make the additional recommendation that the PSNI should report to the Policing Board within three months of the publication of this report on the progress of its implementation of the overarching policy. That report should provide an explanation for any further delay.

² Recommendation 24, Human Rights Annual Report, 2008, p.148.

Recommendation 15

The PSNI should report to the Policing Board within three months of the publication of this report on the progress of its implementation of the overarching policy. That report should provide an explanation for any further delay.

The PSNI Members of the Public policy ensures that PSNI officers handle information supplied by members of the public in a legal, effective and confidential manner. However, the Members of the Public policy will be replaced on implementation of the new IT system and will be linked to the overarching policy referred to above.

I have examined the Chief Surveillance Commissioner's 2009 report and met with him to discuss the content of his report. No concerns have been raised in respect of PSNI intelligence management. Furthermore, if and when recommendations are made by the Surveillance Commissioner in his reports these are incorporated into PSNI policy as appropriate.

COVERT POLICING TRAINING

Training for Authorising Officers

As reported in the 2007 and 2008 Annual Reports, the PSNI ensures that only those officers who have completed the PSNI's Authorising Officers' course are eligible as authorising officers.³ The PSNI policy on Covert Surveillance Authorisations and the role of the Central Authorisations Bureau (CAB) makes it clear that only those officers who have completed the course should be eligible as Authorising Officers. Training is provided both for officers recruited as Authorising Officers and as a refresher for those Authorising Officers already in post. The continuation of such training is critical to ensuring that all officers operate within the law and within the boundaries required of them by the Human Rights Act 1998. The PSNI is committed to this training and is proactive in up-dating its training.

³ Recommendation 31, 2006 Human Rights Annual Report, p.90.

I have agreed with the PSNI that I will attend the training courses to monitor their delivery. I will do that over the course of the next few months and report further in next year's Annual Report.

Other covert policing training

In the 2008 Annual Report, the training devised by the PSNI Intelligence Skills Team (IST) for PSNI officers engaged in Covert Human Intelligence Source (CHIS) handling was reported upon. It was recorded that the training was carefully focused and directed, with human rights issues at the forefront of teaching and class discussion. This was recommended by the Police Ombudsman's Operation Ballast report of 2007.

In addition, the Operation Ballast report recommended that PSNI officers appointed to Intelligence Branch should have detective training to enable them to carry out their functions efficiently and effectively.⁴ The intention behind the recommendation was that all officers in post in the Intelligence Branch should have detective training, not just new appointments. I can report that all PSNI Intelligence Branch officers have now completed this training and that all but a small number of officers have completed the Investigative Skills Course. The remainder of officers will be trained over the course of the coming months.

In respect of any officer who wishes to work as a CHIS handler, he or she must now complete, and pass, an intensive seven week training and assessment process, which includes the two week Investigative Skills Course.

In order to evaluate training I have met with senior officers within Crime Operations, Specialist Operations Branch (SOB) trainers, the head of Central Authorisations Bureau (CAB) and the Chief Surveillance Commissioner. I will observe the SOB training at various stages over the course of the next six months and have already been given access to lesson plans and materials. I

⁴ Police Ombudsman Operation Ballast Report, recommendation 5.

have not been denied access to any document I have requested. If and when an issue has arisen, which may simply have been an issue of clarification, the PSNI has addressed it. I will continue to monitor PSNI covert policing training as part of its annual human rights compliance assessment and report to the Human Rights and Professional Standards Committee accordingly.

THE CHIEF SURVEILLANCE COMMISSIONER'S REPORTS

The reports of the Chief Surveillance Commissioner have been examined by the Policing Board's Human Rights Advisors every year.⁵ As in previous years, I have had unrestricted access to the 2009 report and to the Chief Constable's response. I have also discussed both these documents with the PSNI Human Rights Legal Adviser and the Head of CAB. The Surveillance Commissioner made a small number of recommendations concerning IT systems. The inspection team were, once again, impressed both at the transparency of the PSNI and the access that was given unhindered to the people and documents requested. The Chief Surveillance Commissioner reports that the PSNI are competent in their management systems and operate within the established legal boundaries. The standard of compliance is found to be high. The PSNI continues to demonstrate its commitment to implementing any recommendations made by the Surveillance Commissioner in his Annual Reports.

NATIONAL SECURITY: TRANSFER OF PRIMACY

The Policing Board and the PSNI have devised a framework to ensure that the transfer of primacy does not affect the ability of the PSNI to comply with the Human Rights Act 1998 or the Policing Board's ability to monitor that compliance. The PSNI operates within the five principles on which the transfer of national security was based.⁶ The five principles are as follows: (i) all

⁵ The first Human Rights Annual Report in 2005 considered the reports of the Chief Surveillance Commissioner dating back to 2002.

⁶ These five principles were accepted by the Government and are recorded in Annex E to the St. Andrews 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

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 with 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.

I have continued to monitor the PSNI's compliance during the course of this reporting year. To that end, I have been 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. The Memorandum of Understanding and the Service Level Agreements were examined and commented upon by the previous Human Rights Advisors to the Policing Board. They reported that they were satisfied as to the arrangements in place.

I am revisiting that this year and will carry out a further review to ensure that the principles continue to apply and that there has been 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 the course of the last six months, I have met with senior officers within PSNI Crime Operations to discuss the working arrangements between the PSNI and the Security Service. I have also discussed the issue with a number of other relevant agencies and will be meeting with the head of the Security Service. While some issues have arisen, which are being dealt with, they do

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.

not affect the PSNI's ability to comply with the Human Rights Act 1998 or the Policing Board's ability to monitor that compliance. The Policing Board will continue to monitor the arrangements between the PSNI and the Security Service.

OPERATION BALLAST

Following allegations made by Raymond McCord Senior concerning the murder of his son, Raymond McCord Junior, on 9 November 1997, the Police Ombudsman commenced an investigation. The investigation also examined other murders, attempted murders and serious acts of criminality where it was alleged that an individual or individuals were involved in these acts whilst acting as informants for the Royal Ulster Constabulary (RUC) Special Branch. The Statement by the Police Ombudsman of Northern Ireland was published on 22 January 2007 (the Operation Ballast Report). It contained 20 recommendations, 17 of which were directed to the PSNI. The last of the recommendations required the Policing Board to establish a mechanism to review the PSNI response to the recommendations in the Operation Ballast Report within six months and at appropriate intervals thereafter (recommendation 20).

The Policing Board accepted its responsibility for overseeing the implementation of the recommendations made in the Operation Ballast Report and agreed that its Human Rights Advisor(s) should examine, validate and report on the implementation of those recommendations. I continued in that role this year and had detailed meetings with senior officers in PSNI Crime Operations, trainers in PSNI Special Operations Branch, the Director and the Senior Investigating Officer of the Historical Enquiries Team (HET) and the Director General of the Prison Service. I can report that the PSNI has implemented all but four recommendations (1, 2, 3, and 5) contained within the Operation Ballast Report.

The PSNI and HET have provided me, during the course of this year, with a number of reports on their work in the progression of the outstanding

Operation Ballast recommendations, together with other relevant documentation which I have requested. In particular, HET has provided me with a written report on its reinvestigation and work in progressing recommendations 1-3. I am satisfied that the PSNI has provided me with all the information I have required.

Recommendations 1 and 2: Investigation of North Belfast and Newtownabbey informant network and investigation of Informant 1

Recommendation 1 required a thorough investigation of all crimes which the network of informants – covert human intelligence sources (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 Informant 1 as a suspect in all murders, attempted murders and serious crime for which he is suspected (treating them all as linked crimes).

The PSNI accepted both those recommendations. The task was referred to the Complex Enquiries Team, a sub-unit of the Historical Enquiries Team (HET). The investigation covers a number of murders and attempted murders that allegedly occurred between August 1989 and December 2002. Importantly, the requirement is for a reinvestigation not an administrative review of all relevant crimes. The PSNI accepted that.

A five stage reinvestigation model was adopted by the Complex Enquiries Team as follows:

Stage 1 Review original investigation material and any further materials identified/documentated by the Police Ombudsman during the Operation Ballast investigation to be entirely satisfied that all evidential opportunities have been identified. Identify all family issues. Second review and sign off by Senior Investigating Officer (SIO). Actions created from recommendations within the

Final SIO Report prioritised as low, medium or high and allocated to an investigator accordingly.

- Stage 2 Conduct focused investigation (including re-interviewing of witnesses and victims) to expand the evidential base of each inquiry where possible. Re-interview PSNI handlers and controllers as appropriate to each case.
- Stage 3 Collect and analyse evidence and intelligence produced, including analysis of any intelligence regarding allegations of collusion of PSNI handlers and controllers.
- Stage 4 Reports to Public Prosecution Service, Police Ombudsman, Chief Constable and Criminal Cases Review Commission.
- Stage 5 Deliver summary reports to families of victims.

All of the cases being dealt with by the Complex Enquiries Team have completed the eight disciplines within the review process and are now at varying stages in the reinvestigation model. A number of cases have reached stages 3 to 5. Further evidential opportunities, which emerge, are pursued. The families are kept informed throughout the process. While it will only be possible to assess the effectiveness of the process when it is concluded, I am satisfied that the five stage model met, and continues to meet, the expectations of recommendations 1 and 2. The reinvestigation process is complex and labour intensive and a final assessment will have to await the conclusion of the reinvestigation. Accordingly, recommendations 1 and 2 have been implemented only in part. I will report further to the Policing Board on the status of the reinvestigation in due course.

Recommendation 3: Investigation of cancelled informants in 2003

Recommendation 3 required an investigation of the 12% of CHIS cancelled in 2003 after the intervention of the Police Ombudsman and Stevens recommendations. It has previously been recorded that the 12% of CHIS

cancelled in 2003 were deregistered on the grounds of suggested intelligence rather than on solid evidence that they were involved in serious crime and that at the time, all cases were referred to CID and none resulted in prosecution. The PSNI referred relevant cases to HET for further review and investigation. Any evidence uncovered of police criminal misconduct will be referred to the Police Ombudsman for investigation. Recommendation 3, by the nature of the investigation, is likely to remain outstanding for some considerable time to come. Accordingly, recommendation 3 is implemented in part only.

Recommendation 5: Detective training

This recommendation required PSNI officers appointed to Intelligence Branch to have detective training to enable them to carry out their functions efficiently and effectively. Since 2004, to work in PSNI Intelligence Branch officers had to complete detective training. Before 2004, this was not the case. By January 2008 it was reported that all Intelligence Branch officers had received or were receiving training and all those appointed to CHIS handling duties were required to have CID experience prior to appointment. Special Operations Branch (SOB) trainers put forward a proposal to increase the training and assessment programme for all CHIS handlers to seven weeks to include the two week Investigative Skills Course with a pass/fail exam. That means no officer will assume any handling duties unless and until he or she has completed the assessment and training.

This allows the PSNI to recruit officers from across the Service as CHIS handlers rather than merely from within Crime Operations. That proposal was accepted by the Policing Board and I agree that it represents an appropriate process to both ensure the most suitable candidates can be recruited and that quality of training is delivered before the officers commence their duties. In order to evaluate the above, I met with senior officers within Crime Operations, Specialist Operations Branch trainers, the head of Central Authorisations Bureau (CAB) and the Chief Surveillance Commissioner. I have reviewed the 2009 report of the Chief Surveillance Commissioner. I will be observing the SOB training at various stages over the course of the next

six months and have already been given access to lesson plans and materials. I have not been denied access to any document I have requested.

The intention behind the recommendation was that all officers in post in the Intelligence Branch should have detective training, not just new appointments. I can report that all but a small number of PSNI Intelligence Branch officers have completed the Investigative Skills Course. The remainder of officers will be trained over the course of the coming months. That being the case, I consider recommendation 5 to have been implemented in part but when the training is complete the recommendation will have been implemented in full. I will report further to the Board in due course.

To ensure that the training does deliver suitable and highly trained officers, the Policing Board will monitor this as part of its annual human rights compliance assessment.

CHAPTER 10: VICTIMS

The treatment of victims of crime is a significant indicator of the commitment of a police service to the defence and protection of human rights and fundamental freedoms. Victims are protected by the European Convention on Human Rights (ECHR). The ECHR underpins all actions and policy of the police so that when carrying out their duties police officers must protect human dignity and the human rights of all persons. In this chapter I will consider how the PSNI treats victims and in doing so how the police take cognisance of victims rights under the ECHR and other international human rights instruments. Victims' rights under the ECHR include for example the right to life (Article 2), the right not to be subjected to torture, or to inhuman or degrading treatment (Article 3) and the right to private and family life free from violence and intimidation (Article 8).

Furthermore, the Police (Northern Ireland) Act 2000 confers upon police officers the duty to protect life and property, to preserve order, to prevent the commission of offences, and where an offence has been committed, to take measures to bring the offender to justice.

In this chapter I consider how the PSNI treats victims under certain categories of recorded incidents including domestic abuse and hate crime; how the PSNI interacts with minority groups and how police officers are trained to deal with victims of crime. I remind police officers that all victims of crime are entitled to the protection of the police and to a proper investigation, which keeps the victim informed throughout the progress of the investigation. This chapter will also include an overview of the thematic inquiry carried out on behalf of the Policing Board's Human Rights and Professional Standards Committee during 2009. The thematic inquiry examined the PSNI approach to tackling domestic abuse and, in doing so, PSNI compliance with the Human Rights Act 1998. The full report can be accessed on the Policing Board website.

DOMESTIC ABUSE

In February 2008 the Policing Board agreed a new approach to meeting its statutory duty to monitor PSNI compliance with the Human Rights Act 1998; that of the thematic inquiry. A key focus of the thematic approach is community engagement and so in undertaking the first of a series of planned inquiries I met with key stakeholders to discuss the issues experienced by victims of domestic abuse and the issues those victims experience when they come into contact with the police. This new approach to the Policing Board's work provides an opportunity for the wider community to assist the Policing Board, by providing the evidence base against which the performance and behaviour of the PSNI can be judged and assessed.¹

This collaborative approach enables key stakeholders to meet with the Policing Board and the PSNI in a focused engagement, within the parameters of an inquiry's terms of reference in order to achieve a specific objective. In seeking community input the Policing Board is able to receive and channel local opinion to address existing problems and identify potential solutions. From a policing perspective the thematic inquiry serves to highlight awareness of issues such as domestic abuse and assists the PSNI in responding to this type of crime. For example, the domestic abuse thematic inquiry received significant press coverage. In a series of roundtable events stakeholders came to Parliament Buildings to meet with Members of the Human Rights and Professional Standards Committee to hold discussions in an open forum, identifying issues, which I then considered as part of the inquiry.

I examined the recorded statistics and the method used by the PSNI to record incidents of domestic abuse and examined clearance rates. I considered different categories of victim. While women are the more likely to suffer

¹ As a result of the success of the first thematic inquiry, the Committee has undertaken to conduct two further inquiries, the first of which aims to examine the views of children and young people from a policing perspective. The third inquiry will examine the policing of the Lesbian, Gay, Bisexual and Transgender (LGBT) community in Northern Ireland.

domestic abuse, with 1 in 4 suffering domestic abuse within the home in their lifetime, recent statistics also reveal a worrying increase in incidents of domestic abuse reported by members of the lesbian, gay and bisexual (LGB) communities. Traveller and ethnic minority communities are also affected by domestic abuse and their treatment as victims is considered within the report. I also considered the reasons why victims may be deterred from reporting incidents to the police.

The final inquiry report was published on 24 March 2009 and is available on the Policing Board website. A total of 14 recommendations were made and accepted by PSNI. I will be monitoring the implementation of those recommendations and will produce a further report in the summer of 2010 to include progress on the recommendations and any other issues that have arisen. In particular, I will be reporting on the operation and effectiveness of the Public Protection Units, Multi-Agency Risk Assessment Conferences and Public Protection Arrangements Northern Ireland.

I commend the PSNI for its open and reflective approach to the thematic inquiry and its proactive response to the issues raised.

HATE CRIME

Hate incidents are defined as any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate. 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. Both of these definitions have been adopted by ACPO and the PSNI. The PSNI should continue to work with partner agencies to ensure that they all adopt the same definition of hate crime and that all hate crime files are flagged as such to enable tracking through the criminal justice process.

In the Human Rights Annual Report (the Annual Report) of 2006 and 2007, it was noted that the level of hate crime in Northern Ireland was increasing. In

the 2008 Annual Report, it was noted that the number of hate crime incidents reported had decreased from 3,113 incidents to 2,844 incidents. The number of hate incidents has once again increased, although only marginally, to 2,864 incidents of hate crime in 2008/2009. The number of recorded hate crimes has decreased between 2007/2008 and 2008/2009 from 2,035 crimes to 1,987 crimes.

Table 1 below sets out the total number of incidents of hate crime, the total number of recorded hate crimes, the total number of recorded hate crimes cleared and the clearance rate between 1 April 2008 and 31 March 2009. However it should be noted that these figures do not give a full reflection of the level of hate crime in Northern Ireland. Not only is hate crime significantly under-reported, it is also clear that some hate crimes are not being recorded as such and therefore the figures will be distorted.

Table 1: Hate incidents, recorded crimes and clearance rates, 1 April 2008 to 31 March 2009²

Type of hate crime	Total number of incidents		Total number of crimes		Total number of crimes cleared		Clearance rate (%)	
	07/08	08/09	07/08	08/09	07/08	08/09	07/08	08/09
Racist	976	990	757	771	86	96	11.4	12.5
Homophobic	160	179	114	134	18	29	15.8	21.6
Faith/Religion	68	46	62	35	10	4	16.1	11.4
Sectarian	1,584	1,595	1056	1,017	152	155	14.4	15.2
Disability	49	44	42	28	5	4	11.9	14.6
Transphobic	7	10	4	2	0	1	0	50.0
Total	2,844	2,864	2,035	1,987	271	289	-	-

Table 1 demonstrates that during 2008/09 the number of reported homophobic incidents increased by 19 (+11.9%), racist incidents by 14 (+1.4%), sectarian incidents by 11 (+0.7%) and transphobic incidents by three (+42.9%). By contrast, during the same period, faith/religion incidents

² PSNI Annual Statistical Report, Hate Incidents & Crimes, 1 April 2008 – 31 March 2009.

decreased by 22 (-32.4%) and disability incidents fell by 5 (-10.2%). The PSNI suggests that these decreases are likely to be due to more accurate recording.

There has been an overall decrease since 2007/2008, albeit small, in the number of crimes recorded. Crimes with a sectarian motivation fell by 39 (-3.7%), faith/religion by 27 (-43.5%), disability by 14 (-33.3%) and transphobic by 2 (-50.0%). However, the number of crimes with a homophobic motivation increased by 20 (+17.5%), and the number of racially motivated crimes increased by 14 (+1.8%).

There was an increase in the clearance rates recorded for all types of hate crimes in 2008/09 compared to 2007/08, with the exception of faith/religion where the clearance rate decreased from 16.1% to 11.4%. The clearance rate for homophobic crimes increased from 15.8% to 21.6%, for disability motivated crime from 11.9% to 14.3%, for racist motivated crimes from 11.4% to 12.5%, and for crimes with a sectarian motivation increased from 14.4% to 15.2%.

There were ten transphobic incidents recorded during 2008/09, three more than were recorded during 2007/08. The number of crimes with a transphobic motivation fell from four in 2007/08 to two in 2008/09; one of the two offences was criminal damage, and the other was an assault. In 2007/08 there were no crimes with a transphobic motivation cleared, however, one offence was cleared during 2008/09, resulting in a clearance rate of 50.0%.

Table 2 below details the number of recorded crimes with a hate motivation according to the type of offence between 1 April 2008 and 31 March 2009. The table indicates that the majority of all racist and faith/religion motivated crimes were property related (burglary, theft and criminal damage), whilst the majority of all the homophobic and disability motivated crimes recorded were violent crimes (offences against the person, sexual offences and robbery). Sectarian motivated crime was more evenly split.

Table 2: Recorded hate crimes according to type of offence, 1 April 2008 to 31 March 2009³

Type of Offence \ Hate Motivation	Hate Motivation					Total
	Racist	Homophobic	Faith/ Religion	Sectarian	Disability	
Murder	0	0	0	0	0	0
Manslaughter	0	0	0	0	0	0
Attempted Murder	2	0	0	11	0	13
Threat or conspiracy to murder	17	6	0	33	1	57
All woundings/assaults	224	69	2	287	14	596
Intimidation/harassment	44	18	3	77	1	143
Robbery	12	2	1	9	1	25
Other violent crime	3	7	0	2	1	13
Burglary	10	0	1	16	3	30
Theft	10	2	2	19	0	33
Criminal damage	440	30	25	498	7	1,000
All other notifiable offences	9	0	1	65	0	75
Total	771	134	35	1,017	28	1,985

PSNI recording and monitoring of hate crime

In accordance with the definition of ‘hate incident’ noted above, the PSNI policy on hate incidents⁴ requires officers to record such incidents based upon the perception of the victim or any other person as to what the motivation for the prejudice or hate was.⁵ It is reiterated in the policy that to report a hate incident evidence is not required; the perception test relates to all, including a police officer.⁶ The policy states that the PSNI “must empower and encourage victims or witnesses to hate incidents to come forward and report these to the police.”⁷ They are reminded that the actions they take at the scene of an incident can have a significant impact on the success of any later investigation.⁸

³ PSNI Annual Statistical Report, Hate Incidents & Crimes, 1 April 2008 – 31 March 2009.

⁴ PSNI Policy Directive 02/06, Police Response to Hate Incidents, 21 March 2006.

⁵ *Ibid.* s.2 para. (c).

⁶ *Ibid.* s.2 para. (d).

⁷ *Ibid.* s.7 para. 2(1).

⁸ *Ibid.* s.7 para. 4(1).

A section of the policy is dedicated to the consideration that officers attending the scene of a hate incident must give to victims, and notes that victims “face the additional trauma of knowing that they have been specifically targeted because of their membership of a particular group. This feeling of vulnerability and isolation can impact on entire communities and create an increased fear of further incidents.”⁹ The policy goes on to state that victims should be encouraged to seek support from the various statutory and voluntary groups who can ensure they receive the immediate help and ongoing reassurance they require.¹⁰

The policy requires that supervisors attend the scene where practicable, and ensure that the PSNI policy is followed and the incident is accurately recorded.¹¹ Hate Incident Minority Liaison Officers (HIMLOs) are located within each police district. HIMLOs specialise in dealing with hate incidents and take the lead in supporting and advising victims of hate incidents and liaising with significant partners in addition to supporting other police officers involved in investigating the incident.¹²

Whether or not there are sufficient HIMLOs with the requisite training, authority and resources available to achieve their purpose will be considered over the course of the next 12 months. In particular, the Human Rights and Professional Standards Committee will scrutinise this closely in the context of lesbian, gay, bisexual and transgender victims of hate crime as part of the thematic inquiry being conducted in early 2010.

⁹ *Ibid.* s.7 para. 5(1).

¹⁰ *Ibid.* s.7 para. 5(4).

¹¹ *Ibid.* s.7 para. 6.

¹² *Ibid.* s.7 para. 9.

MINORITY COMMUNITIES PERCEPTIONS OF THE PSNI¹³

The Policing Board consults with a wide range of representatives from all communities in Northern Ireland, including minority groups. This year I met with representatives from a number of statutory, non-governmental and voluntary organisations, for example, the Rainbow Project, NICEM,¹⁴ the Children's Law Centre, NI Alternatives, Community Restorative Justice Ireland, An Munia Tober,¹⁵ Women's Aid and Include Youth to discuss the effectiveness of partnership working with the PSNI and perceptions of the PSNI's awareness and understanding of the needs of particular minority groups. Over the course of the next year I will continue to consult with groups representing the interests of minorities and I shall raise any matters of concern in next year's Annual Report.

I wish to re-state at this stage the importance of the PSNI keeping its relationships with minority communities in Northern Ireland under permanent review. While racism or homophobia, for example, may involve deliberate bias it may also involve the less obvious, but equally harmful, exclusion of individuals and groups from protection and service delivery. The PSNI is working hard to listen, to learn and to adapt to diverse communities with different needs. To translate that into positive improvements for minority communities in Northern Ireland, policy must be informed by those communities and it must be applied in a way which is respectful of those communities. The PSNI is engaging innovative community safety measures aimed at tackling hate crime and should be commended for its efforts, however, much more will be required in the coming years.

¹³ Based on meetings with the groups referred to. I do not suggest there are not other perceptions held.

¹⁴ The Rainbow Project aims to address the physical, mental and emotional health of gay and bisexual men in Northern Ireland.

¹⁵ The main Irish Travellers support program in Belfast, An Munia Tober provides a variety of services to the Irish Traveller community.

PSNI engagement with the lesbian, gay, bisexual and transgender community

In January 2009, the Rainbow Project conducted a survey amongst the Lesbian, Gay, Bisexual and Transgender (LGBT) community in Northern Ireland about their experiences and fears in relation to homophobic hate crime, and their perceptions of policing and the PSNI.¹⁶ Following extensive consultation and research, the Rainbow Project published a report¹⁷ which concluded that whilst the perception of the PSNI in the LGBT community has improved, and the PSNI have secured greater co-operation from the LGBT community, there remains an unacceptably high level of homophobic hate crime throughout Northern Ireland and a low level of reporting. Of those surveyed, 21% of gay and bisexual males and 18% of lesbian, gay and bisexual females had been the victim of one or more homophobic hate crimes or incidents in the last three years. The report made a number of recommendations which can be summarised as follows:

1. The PSNI should encourage lesbian, gay and bisexual people to report hate incidents;
2. The PSNI should improve the recording mechanism for hate incidents and ensure protocols are adhered to following reporting;
3. The PSNI should ensure all serving officers and relevant civilian staff have the expertise to recognise and deal with minority groups and with incidents of hate; and
4. A hate crime partnership, incorporating hate incidents against minority groups, should be established in each policing District.

Whilst the PSNI should be commended on the progress made to date in recognising the effects of homophobic hate crime on victims, and the steps taken to redress this,¹⁸ there is clearly a great deal more to be done. I wish to congratulate the Rainbow Project on this key piece of work and respectfully

¹⁶ Commissioned by the PSNI's LGBT Independent Advisory Group.

¹⁷ *Through Our Eyes*, John O'Doherty for the Rainbow Project, June 2009.

¹⁸ Such as the introduction of HIMLOs; development of training on hate crime for new recruits; review and updating of the policy on responding to hate crime incidents; and more frequent and efficient partnership working, for example, on the PSNI LGBT Independent Advisory Group.

endorse the recommendations made. The concerns raised and recommendations made in the Rainbow Project's report will be considered in greater detail during the course of the LGBT thematic inquiry next year. I shall also use the thematic as an opportunity to consult with a wider range of LGBT groups on policing issues. In the meantime, the PSNI should take steps to disseminate the Rainbow Project report across the police service. I am pleased to report that the PSNI have put the recommendations as a fixed agenda item onto the PSNI Strategic LGBT Independent Advisory Group.

PSNI engagement with the Irish Traveller community

The Race Relations (Northern Ireland) Order 1997 recognises Irish Travellers as a racial group and defines the Irish Traveller community as “a community of people commonly so called who are identified (by themselves and others) as people with a shared history, culture and traditions, including, historically, a nomadic way of life on the island of Ireland”. Irish Travellers are protected at law from direct or indirect discrimination¹⁹ on grounds of racial or ethnic origin. The two most relevant ECHR rights in this context are those contained in Article 8 (right to respect for private and family life, home and correspondence) and Article 14 (enjoyment of the ECHR freedoms and rights without discrimination). For example, Article 8(1) has been held to guarantee the right to respect for the traditional way of life of Irish Travellers.²⁰

The Unauthorised Encampments (Northern Ireland) Order 2005 provides that:

1. The police have the power to evict trespassers intent on residing on land in a vehicle – this is only lawful provided that there is a suitable alternative site for them to move to within a reasonable distance;²¹
2. Where no suitable alternative site is available, the police may only evict trespassers intent on residing on land in a vehicle if they have six or

¹⁹ By virtue of the Race Relations (NI) Order 1997, as amended by Regulations SR 2003/341 (from 19 July 2003) which were required to implement Council Directive 2000/43 EC of 29 June 2000.

²⁰ *Chapman v UK* [2001] 33 EHRR 399.

²¹ Unauthorised Encampments (Northern Ireland) Order 2005, Article 5.

more vehicles, or have used threatening, abusive or insulting language or behaviour, or have caused damage to the land;²² and

3. A failure to comply with the police direction constitutes a criminal offence and gives the police the power to seize the vehicle(s) on the land in question.

If the trespassers are members of the Irish Traveller community, the PSNI should consult the Northern Ireland Housing Executive as to whether there is a suitable pitch for the caravan or each of the caravans on a relevant caravan site. Where a suitable alternative site is not available police may only evict trespassers intent on residing on the land if they have six or more vehicles, or have used threatening, abusive or insulting language or behaviour, or caused damage to the land. The powers available to the PSNI under the Order are discretionary. Decisions requiring trespassers to leave land should be taken by the police only in the light of all the relevant circumstances of each case. The PSNI needs to be able to demonstrate that they have taken into account any welfare needs of Irish Travellers before making a decision to evict.

All enforcement measures must be 'proportionate' in the context of the Human Rights Act 1998. What is proportionate will vary according to the circumstances of each case. Decisions must always be lawful, in accordance with established policy and procedures, taking into account relevant considerations and disregarding irrelevant considerations including the needs of both the settled community and the Irish Traveller community. The decisions must also be proportionate according to the circumstances of each encampment, which means having regard to the nature of the location and the behaviour and needs of the Irish Travellers.

The powers granted to the PSNI under the 2005 Order are clearly defined in PSNI Service Procedure,²³ which also instructs officers that comprehensive records must be kept, evidencing the necessity and proportionality of any

²² *Ibid.* Article 3.

²³ PSNI Service Procedure 19/2007, Unauthorised Encampments (Northern Ireland) Order 2005, 26 March 2007.

decision-making process carried out prior to effecting a removal under the Order²⁴ 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.²⁵ The Appendix to the Service Procedure provides guidance on recording the decision-making processes and 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.²⁶

The PSNI have a continuing obligation under recommendation 32 of the 2007 Annual Report 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.²⁷ There was a total of five police directions issued between 1 April 2008 and 31 March 2009, which is one more direction than was issued in the corresponding period the previous year. I shall continue to monitor the directions issued.

Disability related hate crime

The PSNI defines a disability related incident to be any incident perceived to be on the grounds of a person's physical or mental impairment by the victim or any other person.

The Institute for Conflict Research, funded by the PSNI and the Northern Ireland Office, has published recently the results of its research.²⁸ A number of key findings emerged:

- People with a disability reported a wide range of forms of hate crime, including verbal abuse, assaults and damage to property;

²⁴ *Ibid.* s.8(5)(d).

²⁵ *Ibid.* s.8(5)(e).

²⁶ *Ibid.* Appendix H.

²⁷ Recommendation 32, 2007 Human Rights Annual Report, p.210.

²⁸ *Hate crime against people with disabilities: a baseline study of experiences in Northern Ireland*, Institute for Conflict Research, June 2009

- There is under reporting of disability hate incidents meaning PSNI annual statistics do not reflect the experiences of people with a disability;
- The PSNI is seen as the primary agency for dealing with hate crime;
- The PSNI have improved their systems for dealing with hate crime however the implementation of the systems and procedures is not always carried out in accordance with operational practice standards;
- Disability support organisations were not very aware of disability hate crime issues; and
- People with disabilities felt that awareness of disability related issues was low among the general public.

Three recommendations were directed towards the PSNI:

1. The PSNI should work with disability support organisations to establish protocols and procedures for third party reporting of disability hate crimes;
2. The operational systems and processes used by PSNI for recording and reviewing disability hate crimes should be reviewed against the standards of best practice; and
3. HIMLOs play a key function in supporting those most affected by disability hate crimes. The PSNI should review the awareness of disability hate crime among HIMLOs and develop appropriate training as necessary

I respectfully agree with the recommendations and recommend that the PSNI disseminate the report to all relevant officers within the PSNI, with a view to informing policy and practice, and report to the Policing Board within six months of the publication of this report on measures to be taken to implement the recommendations. I will monitor the PSNI response over the course of the coming months.

Recommendation 16

The PSNI should disseminate the June 2009 report, *Hate crime against people with disabilities: a baseline study of experiences in Northern Ireland, Institute for Conflict Research*, to all relevant officers within the PSNI with a view to informing policy and practice. The PSNI should report to the Policing Board, within six months of the publication of the 2009 Human Rights Annual Report, on measures to be taken to implement the recommendations.

STUDENT OFFICER TRAINING ON VICTIMS

Recommendation 35 of the 2007 Annual Report remains outstanding.²⁹ It required that the PSNI internal evaluation team evaluate student officer's training on victims and witnesses. I withdraw recommendation 35 but replace it with the new recommendation that the PSNI internal evaluation team should evaluate student officer's training on victims and witnesses as a matter of priority within the next cycle of evaluation and report to the Policing Board on its findings.

Recommendation 17

The PSNI internal evaluation team should evaluate student officer's training on victims and witnesses as a matter of priority within the next cycle of evaluation and report to the Policing Board on its findings.

SATISFACTION LEVELS OF VICTIMS

The PSNI produce an annual Quality of Service Survey which aims to monitor the victim/user satisfaction with the quality of service provided by the police in relation to:

- First contact - making contact with the police
- Police actions to deal with the incident
- Follow up - being kept informed

²⁹ Recommendation 35, 2007 Human Rights Annual Report, p.215.

- Treatment by police staff
- The whole experience - overall service

The PSNI's report for the period 1 April 2008 to 31 March 2009 summarises the key findings as follows:³⁰

- Approximately four-fifths of respondents (79%) indicated that they were satisfied with the overall service provided by the police for 2008/09 (this compares to 80% in 2007/08);
- The vast majority of respondents (87%) stated that they were satisfied with the ease of contacting someone who could assist them. This is a statistically significant decrease from the level of satisfaction in 2007/08 (90%);
- Overall, 81% of respondents were satisfied with the time it took for the police to arrive. This is a statistically significant decrease from the level of satisfaction in 2007/08 (85%);
- Approximately three-quarters of respondents (74%) stated that they were satisfied with the actions taken by police (this compared to 76% in 2007/08);
- 69% of respondents who have had further contact with the police were satisfied with how well they were kept informed of progress (this compared to 70% in 2007/08); and
- Most respondents (86%) stated that they were satisfied with the way they were treated by the police officers and staff that dealt with them (this compared to 88% in 2007/08).

The Policing Board will continue to monitor the satisfaction levels of victims and service users.

³⁰ PSNI 2008/09 Quality of Service Survey, p.1.

CHAPTER 11: TREATMENT OF SUSPECTS

Detained suspects are particularly vulnerable to human rights infringements. Such detention engages a number of articles contained within the European Convention on Human Rights (ECHR); for example, Article 2 (the right to life), Article 3 (the right not to be tortured or subjected to inhuman or degrading treatment or punishment), Article 5 (the right to liberty) and Article 8 (the right to respect for private and family life). In this year's Human Rights Annual Report (the Annual Report), I continue to monitor both the treatment of detainees and the conditions of their detention by an analysis of the reports of the Independent Custody Visitors appointed by the Policing Board. I also consider issues relating to the detention of terrorism suspects at Antrim Serious Crime Suite and review the detention of vulnerable persons and immigration detainees.

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 responsibility for inspecting all custody and interrogation suites and viewing on remote camera live interviews with detained terrorist suspects. In his final report (Report 19), published in May 2007, the Oversight Commissioner confirmed that Patten Recommendation 64 had been implemented in full.

There are four Custody Visiting Teams operating across Northern Ireland, visiting detainees in 19 PSNI designated custody suites.¹ Representatives from the Belfast/Antrim team also conduct visits to Antrim Serious Crime Suite. Detainees are most commonly held in custody under the Police and

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.

Criminal Evidence (Northern Ireland) Order 1989, the Terrorism Act 2000, the Justice and Security Act 2007 and the Immigration Act 1971.

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. The custody visiting teams conduct a significant number of visits on an annual basis. Between 1 April 2008 and 31 March 2009, a total of 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. I would also like to record that the model for the custody visiting scheme, as it applies to terrorism detainees in Northern Ireland, has been commended by those operating a custody visitor scheme in Great Britain, who now intend to adopt the NI scheme. That is a great tribute to all those who have been involved in developing the scheme in Northern Ireland.

Table 1 compares 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 fixed and have been the subject of ongoing revision since 2007 due to a number of custody suite closures.

Table 1: Number of visits per Custody Visiting Team, 1 April 2008 to 31 March 2009

Custody visiting team	Guideline² number of visits for 2008/2009	Actual number of visits in 2008/2009
Belfast/Antrim ³	485	477
Down/Armagh	202	232
North-West	223	211
Tyrone/Fermanagh	188	205
Antrim SCS	24	24
Total	1,122	1,149

Custody Visitors made a total of 1,149 visits between 1 April 2008 and 31 March 2009, which is the same number of visits made in 2007/08. The number of visits exceeds the guideline number of visits set by the Policing Board for 2008/2009. Of the 1,149 visits, 1,111 (97%) were considered to be valid. Custody Visitors classified 772 (69%) of valid visits to be satisfactory. The Tyrone/Fermanagh team recorded the highest level of satisfaction (87%), and the Belfast/Antrim team recorded the lowest level of satisfaction (61%). This is considered further below.

In the relevant period, 38 (3%) visits were aborted. The most common reason given was that the custody suite was closed at the time of the visit. In last year's Annual Report, it was reported that Custody Visitors were not always notified when designated custody suites were closed for refurbishment, nor when they were subsequently re-opened.⁴ This has been a recurrent theme over the last two years despite PSNI Service Procedure on Custody Visitors requiring that "temporary 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

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 2007 and again in June 2008 to reflect custody suite closures over the period.

³ Figures correspond to activity of Belfast/Antrim Team, excluding figures to Antrim Serious Crime Suite.

⁴ 2008 Human Rights Annual Report, chapter 11, p.182.

Support Department staff can notify the Custody Visiting Scheme Administrator accordingly.”⁵

It would seem that whilst PSNI Operational Support Department are efficient at notifying the Policing Board of any closures or re-openings that they are aware of, the information is not always communicated to Operational Support Department in the first instance by the station in question and so Operational Support are unable to pass the message on. Accordingly, I make the recommendation that each Regional ACC should inform PSNI Operational Support Department, who in turn will notify the Custody Visiting Scheme Administrator, when a designated custody suite is closed and when it is subsequently re-opened.

Recommendation 18

Each Regional ACC should inform PSNI Operational Support Department, who in turn will notify the Custody Visiting Scheme Administrator, when a designated custody suite is closed and when it is subsequently re-opened.

Days and times of visits

Between 1 April 2008 and 31 March 2009, 192 (17%) visits were conducted at weekends. This represents a decrease of 5% compared to 2007/2008 in which 22% of visits were made at weekends. Custody visitors are requested to make a number of visits between midnight and 09.00 in order to observe detainees held overnight. This year, 91% of visits were conducted between 09.00 and 21.00, 4% of visits were conducted between 21.00 and midnight, and 5% of visits were conducted between midnight and 09.00. In 2007/2008, 7% of visits were conducted between midnight and 09.00.

Having discussed this with Custody Visiting Team Leaders I am satisfied the small decrease does not represent any departure from the guidance but

⁵ PSNI Service Procedure, Custody Visitors, para 8(5).

remind Custody Visitors that it is important that visits are carried out between midnight and 09.00.

Custody visiting team activity

Table 2 sets out the number of valid visits by each Custody Visiting Team in 2008/09, 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 2: Custody visiting team activity 1 April 2008 to 31 March 2009

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 %
Belfast/Antrim ⁶	462	970	449	214	307	22
Down/Armagh	227	210	100	52	58	25
North-West	202	256	97	68	91	27
Tyrone/Fermanagh	196	117	52	29	36	25
Antrim SCS	24	27	4	15	8	56
2008 – 2009 Total	1,111	1,580	702	378	500	24
<i>2007-2008 Total</i>	<i>1,127</i>	<i>1,618</i>	<i>785</i>	<i>357</i>	<i>476</i>	<i>22</i>
<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 Total⁷</i>	<i>1,178</i>	<i>1,370</i>	<i>702</i>	<i>314</i>	<i>354</i>	<i>23</i>

As Table 2 demonstrates, 1,580 detainees were in police custody during the 1,111 valid custody visits. Custody Visitors saw 702 (44%) of those detained. 378 detainees (24%) refused to be seen by Custody Visitors and 500 detainees (32%) could not be seen for another reason, for example because they were being interviewed by the police (18%), asleep (15%), consulting with a solicitor or GP (9%), or being processed/discharged (7%). The refusal

⁶ Figures correspond to activity of Belfast/Antrim Team excluding visits to Antrim Serious Crime Suite.

⁷ Includes visits to Antrim Serious Crime Suite for the period 1 October 2005-31 March 2006.

rate varied from team to team with the Belfast/Antrim team recording the lowest refusal rate (22%) for the second year running. The highest refusal rate (56%) was recorded in respect of visits to the Antrim Serious Crime Suite. The statistics indicate that the number of detainees refusing visits has risen as has the number who could not be seen for another reason.

I will be continuing to work with the Custody Visitors to address this issue. While I am satisfied this is not a problem created by the Custody Visitors, the reasons must be explored fully and a solution reached. This will involve meetings with the relevant PSNI personnel and other agencies and community groups representing the interests of detained persons.

Treatment of detainees and conditions of detention

The primary legislation which governs the rights of detainees in police custody is the Police and Criminal Evidence (NI) Order 1989 (PACE) together with the associated Codes of Practice. The ECHR and other international human rights instruments,⁸ require Member States to respect, protect and fulfil human rights including the protection of a detained person's physical and mental well-being.⁹ Furthermore, the PSNI is obliged to ensure that standards in police custody suites are safe, humane and effective.

In addition to the minimum standards required by PACE, there is a best practice guide produced by the National Centre for Policing Excellence (NCPE). The Guidance on the Safer Detention and Handling of Persons in Police Custody¹⁰ (SDHP), to which the PSNI has signed up, provides a mechanism for implementation and review by the National Policing Improvement Agency (NPIA). The NPIA produced an implementation report in 2008 but did not review PSNI custody. The Criminal Justice Inspection

⁸ Such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT); the International Covenant on Civil and Political Rights (ICCPR); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988); and the Standard Minimum Rules for the Treatment of Prisoners.

⁹ See, for example, *Barabanshchikov v Russia* [2009] ECHR 24

¹⁰ "Guidance on the Safer Detention and Handling of Persons in Police Custody", 2006.

Northern Ireland (CJINI) proposes to carry out regular reviews of facilities in Northern Ireland over the coming months and years.

The SDHP identifies the standards expected in the handling of persons who come into police contact. The guidance complements PACE. The majority of the SDHP is concerned with the safety of the detainee (for example in respect of self-harm and suicide) but provides some guidance in respect of the facilities and accommodation. For example, in respect of cells in newly built custody suites the guidance provides that all cells “should have both natural and artificial light; detainees should be able to see natural light to tell whether it is day or night. The use of borrowed light from an adjacent area may be acceptable if it allows an accurate understanding of daylight in the cell.”¹¹ This is the standard to be adopted for newly built custody suites but is also recommended so far as possible for older suites.

CJINI reported, in June 2009, its findings following an inspection of police custody provision.¹² It measured the detention and facilities against the Optional Protocol to the Convention Against Torture (OPCAT). The CJINI report found that the cells were generally of a good standard and that, overall, custody services were performed to an acceptable standard but concerns were raised about the detention of immigration detainees for longer periods before transfer to an immigration centre. This remains an area of concern. The CJINI report focused on PACE detention and the use of police custody for immigration detainees. The CJINI report did not address specifically detention of terrorist suspects under the Terrorism Act 2000 (TACT). This is considered further below.

The Policing Board monitors and analyses the reports of Custody Visitors, noting in particular where concerns are raised in relation to treatment or conditions of detention.

¹¹ *Ibid.*, para. 12.3.2.

¹² *Police Custody: The detention of persons in police custody in Northern Ireland*, Criminal Justice Inspection NI, 2009 presented to the Houses of parliament pursuant to s 49(2) of the Justice (NI) Act 2002.

Table 3 sets out the number and types of concerns relating to conditions of detention raised by each Custody Visiting Team during 2008/09.

Table 3: Concerns relating to condition of detention, 1 April 2008 to 31 March 2009

Reason	Belfast/ Antrim	Down/ Armagh	North -West	Tyrone/ Fermanagh	Antrim SCS	Total
Heating	7	1	2	0	0	10
Lighting	14	6	1	2	0	23
Ventilation	3	0	0	0	0	3
Alarm malfunction	0	0	1	0	0	1
Cleanliness	16	28	15	5	0	64
Safety/Security	112	42	18	15	1	188
Sanitation	45	6	14	1	6	72
Faulty equipment	22	1	20	5	0	48
Other	7	3	5	0	0	15
Total¹³	226	87	76	28	7	424

It can be seen that between April 2008 and March 2009, a total of 424 concerns were raised by Custody Visitors in relation to conditions of detention, compared to 500 concerns raised in 2007/2008. While this represents a decrease in the total number of concerns it remains an unacceptably high number. Considering the importance of the issue and the significant ECHR issues raised by detention and, in particular, the concerns regarding safety and security (44%), I will monitor this closely over the course of the next year.

In respect of the treatment of detainees, a total of 12 concerns were raised. 11 of those concerned vulnerable detainees at risk of suicide or self-harm not being checked within the specified time period. Each concern was raised by the Custody Visitor with the Custody Sergeant immediately. The other concern related to the bedding of the detainee. All concerns were raised by the Belfast/Antrim team. I have met with Custody Visitor Team Leaders and discussed the nature of those concerns and the PSNI response to them.

¹³ The total number of concerns relating to the condition of detention (424) and treatment of detainees (12) total more than the total of unsatisfactory visits (339) as there are multiple reasons for concern on some visits.

I remind the PSNI that while the number of concerns raised regarding the safety and security of detainees is low, any number of concerns is too high. The PSNI have a duty to protect all persons detained in their custody. Article 2 ECHR (the right to life) requires them to take positive steps to ensure that the person's life is protected. In last year's Annual Report, the PSNI were reminded of the duty owed to detainees and it was recommended 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.¹⁴ The PSNI accepted that recommendation and reminded all Districts of the requirement to respond promptly to the Policing Board.

The PSNI has also issued a new Custody Directive,¹⁵ which is the first Policy Directive dealing specifically with persons detained in police custody. It is a welcome addition. Furthermore, the PSNI Custody Working Group,¹⁶ which is chaired by Chief Superintendent Operational Support,¹⁷ 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. A Policing Board official attends the group as an observer. I wish to commend the PSNI's increased efforts to respond to and deal with concerns raised by the Policing Board and the steps taken to improve the conditions of detention and the treatment of detainees. I will be proactive in working with the PSNI to this end and will monitor closely the detention of suspects.

The PSNI has improved its performance over the reporting period and I am satisfied that recommendation 25 of the 2008 Annual Report has been implemented in full. In response to recommendation 26 of the 2008 Annual

¹⁴ Recommendation 25 of the 2008 Human Rights Annual Report, p. 188.

¹⁵ PSNI Policy Directive 05/09, Custody, 7 July 2009.

¹⁶ Membership includes representatives of PSNI Operational Support Department, 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.

¹⁷ On behalf of ACC Operational Support.

Report,¹⁸ the Policing Board has implemented a system for monitoring whether the PSNI has responded to concerns in a satisfactory and timely manner. Custody Visitor Team Leaders are advised of the outcomes of unsatisfactory visits on a monthly basis. I am therefore satisfied that recommendation 26 has also been implemented in full. The Policing Board will continue to monitor the levels and types of complaints made by Custody Visitors and the PSNI's response to them.

Custody records

A custody record must be opened as soon as practicable for each person brought to a police station.¹⁹ Custody records are now maintained electronically. Subsequent revisions to custody records must also be recorded electronically. A total of 778 custody records were checked by Custody Visitors between 1 April 2008 and 31 March 2009, which represents 49% of the 1,580 detainees being held during those valid visits. The majority related to detainees arrested under the Police and Criminal Evidence (Northern Ireland) Order 1989. Ten related to detainees arrested under the Terrorism Act 2000 and held at Antrim Serious Crime Suite. 211 detainees refused a visit but allowed their custody records to be checked.

When a detainee is asked by the Custody Sergeant whether they consent to be seen by a Custody Visitor, they are also asked if they consent to the Custody Visitor checking their custody record. Refusal of consent may be the reason why custody records were not checked in a large number (30%) of valid cases. The importance of inspecting custody records is stressed to Custody Visitors in training and where access to custody records is denied, they are advised to record this on the custody visiting form along with the reason they were given.²⁰ In order that the Policing Board can effectively monitor the reasons why custody records are not checked, Custody Visitors are reminded that they should note the reason why a custody record was not checked on the custody visiting form for that visit.

¹⁸ Recommendation 26, 2008 Human Rights Annual Report, p.189.

¹⁹ Police and Criminal Evidence (Northern Ireland) Order 1989, Code C, para.2.1.

²⁰ Independent Custody Visiting Scheme Handbook 2009, para. 3.92.

Delay in entry to custody suites

Table 4 sets out the total number of delays of more than ten minutes experienced by Custody Visiting Teams in gaining access to custody suites 1 April 2008 and 31 March 2009.

Table 4: Delays experienced by Custody Visiting Teams, 1 April 2008 to 31 March 2009

	Belfast /Antrim	Down/ Armagh	North -West	Tyrone/ Fermanagh	Antrim Serious Crime Suite	Total
Delay (>10m)	40	3	3	1	3	50

Of the total 1,111 valid visits carried out, there were 50 occasions (5%) when Custody Visitors were delayed by more than ten minutes. As with previous years the Belfast/Antrim team recorded the highest number of delays. The majority of delays were as a result of custody staff being busy, staff turnover or detainees being processed. I have met with the Custody Visiting Team Leaders and they explain that they experience delay for short periods only and usually when there is a large number of detainees being held. The Custody Visitors were not concerned that delays were deliberate or evasive.

That being the case, I am satisfied that the reason for the delay is not deliberate or obstructive but I remind the PSNI of the importance of granting immediate access to Custody Visitors. I will continue to monitor and will report further in next year's Annual Report. In particular, I will be reporting upon whether or not the statistics have improved. This is an issue which will be considered and resolved at the Custody Working Group referred to above.

Meeting between Custody Visitors and District Command Teams

In the 2006 Annual Report, it was 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.²¹ In its Human Rights Programme of Action 2006/07, 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.²² Instead, the PSNI has left it to District Commanders to decide whether to meet with their respective Custody Visiting Teams. In the 2007 Annual Report, recommendation 39 of the 2006 Annual Report was considered implemented in full, however, the Policing Board has continued to monitor communications between Custody Visiting Teams and their respective District Command Teams.

In the 2008 Annual Report, it was recommended that the Policing Board should consider establishing a protocol whereby each of the Policing Board's Custody Visiting Teams make 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 (DPP) within its area.²³ This recommendation was made in light of concerns raised by representatives of the Custody Visiting Teams that their interaction with District Commanders was minimal and was intended to provide a means by which Custody Visiting Teams raise their concerns in a public forum.

Since this recommendation was made, it has become apparent through consultation with the four Custody Visitor Team Leaders, and through discussion with other Custody Visitors, that there is little support for this recommendation for the following reasons:

- PSNI Districts are not coterminous with the Custody Visiting Teams;
- District Commanders do not always attend DPP meetings;²⁴
- DPPs do not have a statutory role in relation to monitoring human rights, treatment of detainees or conditions of detention;

²¹ Recommendation 39, 2006 Human Rights Annual Report, p.118.

²² PSNI Human Rights Programme of Action 2006-2007, p.20.

²³ Recommendation 27, 2008 Human Rights Annual Report, p.193.

²⁴ Whilst District Commanders in Belfast frequently attend meetings this is not always the case in other areas.

- Quarterly statistics are provided to the Policing Board's Human Rights & Professional Standards Committee for consideration and then published on the Policing Board's website; and
- The Policing Board publish an annual report on the work of the Custody Visiting Scheme, which outlines the activities of each team, and details the visits made to each custody suite.

While I accept what is said by the Custody Visitors and the management response to recommendation 27, which I withdraw, I make the new recommendation that the Policing Board, in consultation with Custody Visitors, considers an alternative means of ensuring that Custody Visitors have a line of communication with District Commanders through the scheme in association with the relevant Committees of the Policing Board. I will discuss this further and report to the Policing Board in due course.

Recommendation 19

The Policing Board, in consultation with Custody Visitors, should consider an alternative means of ensuring that Custody Visitors have a line of communication with District Commanders through the Custody Visiting Scheme in association with the relevant Committees of the Policing Board.

DETENTION OF TERRORIST SUSPECTS AT ANTRIM SERIOUS CRIME SUITE

The relevant provisions for those in police detention following arrest under s.41 of the Terrorism Act 2000 (TACT) are set out in Code H issued under Article 65 of PACE.²⁵ This is complemented by the international standards set out above. In Northern Ireland all terrorism suspects are held at Antrim Serious Crime Suite.

²⁵ Code of Practice for the Detention, Treatment and Questioning of Persons under Section 41 of, and Schedule 8 to, the Terrorism Act 2000, which took effect from 9 November 2008.

In June 2009, Lord Carlile reported on the operation of the Terrorism Acts.²⁶ In that report, he considered the conditions of detainees held in custody suites for the extended period of detention provided under TACT (28 days). He found “there have been developments in the past year of the custody suites in Scotland and Northern Ireland. I have seen both, and regard them as adequate for detention within the present law, and possibly longer if the law were to change again... The adequacy of the Northern Ireland provision has been questioned recently, but my opinion that it is adequate is unchanged provided that flexible arrangements for more spacious exercise facilities for longer detentions are facilitated (they are available).”²⁷

Lord Carlile refers to his discussions with the Greater Manchester Police on their new facility and the assistance he gave with the modification of the plans. He does not specify exactly what provision regarding exercise facilities he would consider appropriate but I will discuss the issue with him. He does provide some clarification when he says “the above is based on my view that it is only acceptable for prisoners detained after 14 days to be held overnight in conditions equivalent in levels of comfort, food and exercise to prison conditions. Detainees are generally transferred to prison after 14 days’ detention.”²⁸

There is currently an agreed protocol between the PSNI and the Northern Ireland Prison Service regarding the transfer of persons detained for longer than 14 days.²⁹ I will monitor, over the course of the next 12 months, the length of detention at Antrim Serious Crime Suite and paying particular attention to the conditions of detention. I will report further in next year’s Annual Report.

²⁶ *Report on the Operation in 2008 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, Lord Carlile of Berriew Q.C., June 2009.

²⁷ *Ibid.*, para.129.

²⁸ *Ibid.*, para.131.

²⁹ Email from PSNI Operational Support Department to Policing Board dated 7 December 2009.

OVERSIGHT OF TERRORISM SUSPECTS

In June 2008, the Policing Board confirmed that the Independent Custody Visiting Scheme would be expanded to cover some of the gaps in protection identified following the discontinuation of the oversight role of the Independent Commissioner for Detained Terrorist Suspects. The Custody Visitors were consulted on the proposed expansion of their role and agreed to assuming those duties save in respect of the attendance at interviews with detained terrorist suspects. Having discussed this issue with Custody Visitors and considered the results of the consultation I agree with the Custody Visitors that it would not be appropriate for a Custody Visitor to sit in on an interview with a detained terrorist suspect. There are a number of reasons for Custody Visitors' reluctance on this issue. Should attendance at interviews with detained terrorist suspects be required, it is the responsibility of Government to fill the gap left by the discontinuation of the role of Independent Commissioner.

I would like to commend the Custody Visitors for agreeing to assume these additional duties. They have now received training on all aspects of their expanded role and will report to the Policing Board on their findings.

The Coroners and Justice Act 2009 makes provision which, when in force, will permit police authorities in England and Wales to confer powers on Custody Visitors to listen to audio recordings and view the video recordings of interviews with suspected terrorist detainees.³⁰ A working party³¹ has been established to develop codes of practice for Custody Visitors in England and Wales on this extended role. A representative from the Northern Ireland Policing Board has been invited to participate in an advisory role as the existing procedures and practices associated with Northern Ireland's Custody

³⁰ Coroners and Justice Act 2009, s.117(6) – which will come into force on a day to be appointed by the Secretary of State.

³¹ Made up of representatives from the Home Office, the Association of Police Authorities, the Association of Chief Police Officers and the Independent Custody Visiting Association.

Visitors visiting terrorist detainees are deemed to be best practice and could form the basis for a Code of Practice for England and Wales.

NON-DESIGNATED STATIONS

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.³² Stations which have not been designated by the Chief Constable are not currently included within the remit of the Policing Board's Independent Custody Visiting Scheme. It is only in limited circumstances that a person can be detained in a station that has not been designated, and it is unlikely to be for more than six hours.³³

There are currently 19 designated police stations, thus rendering all other police stations non-designated. The detention of persons in non-designated stations means that an officer detaining an individual in a non-designated station is under a duty to perform all the functions of a custody officer.³⁴ As Custody Visitors do not visit non-designated stations they cannot therefore monitor the treatment of detainees held in these stations or the conditions of their detention.

³² Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), Article 36.
³³ 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 constable 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.

³⁴ Police and Criminal Evidence (Northern Ireland) Order 1989, Article 37(7).

This raises potentially significant human rights considerations. While there is required a legislative amendment to ensure Custody Visitors are able to insist upon visiting non-designated stations, the PSNI may agree to permit such access. In the 2008 Annual Report, it was recommended that the PSNI and the Policing Board should agree a process to allow Custody Visitors to inspect non-designated places of detention.³⁵

I have discussed this recommendation with the Policing Board's Service Monitoring Manager. Of the 27,092 persons arrested under PACE in 2008/09, only 174 (0.6%) were held in non-designated stations. A total of 145 were detained in non-designated stations whilst refurbishment work was completed at Antrim station. The small percentage of detainees held in non-designated detention means that the chance of a detainee being held at the time of an unannounced visit is highly unlikely. Any extension of the Custody Visiting Scheme to non-designated stations would place an undue burden on the Custody Visiting Teams and result in a large number of aborted visits which is not conducive to the running of an effective and efficient scheme.

Given the statutory provisions limiting the occasions when a person may be detained in a non-designated station, and the fact that complaints in any individual case can be made to the Police Ombudsman, I am satisfied that an appropriate way to deal with the issue is for the Human Rights Advisor to the Policing Board, accompanied by a Custody Visiting Team Leader or Member of the Policing Board, to visit those non-designated stations in which any person has been detained over the previous 12 months, with the permission of the Chief Constable having been sought. Any findings or recommendations arising will then be reported to the Human Rights and Professional Standards Committee and the Service Monitoring Manager. Should any concerns arise over the course of those visits I will consider making a new recommendation in next year's Annual Report. Furthermore, I will carry out a review of all complaints made to the Police Ombudsman over a 12 months period which relate to detention in non-designated stations.

³⁵ Recommendation 28, 2008 Human Rights Annual Report, p.197.

Accordingly, recommendation 28 of the 2008 Annual Report is withdrawn but I remind the PSNI of the provisions of PACE and the importance of detaining persons only in designated stations save in the circumstances prescribed by PACE. I will discuss this issue further with the PSNI.

VULNERABLE PERSONS IN CUSTODY

In 2008/09, I continued to monitor the PSNI's approach to the detention of vulnerable persons and, in particular, detainees likely to self-harm, persons held under immigration legislation and minority ethnic detainees. 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.³⁶

The PSNI conducts and maintains a generic risk assessment in relation to each PSNI detention facility.³⁷ The risk assessment, most recently reviewed in April 2009, 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 and self harm,³⁸ and guidance is given on how custody staff should deal with vulnerable detainees,³⁹ children and juveniles,⁴⁰ and disabled/less able persons in the custody environment.⁴¹

³⁶ ACPO Guidance on Safer Detention and Handling of Persons in Police Custody 2006.

³⁷ PSNI Risk Assessment, Detainee/Custody Duties, Form RA3 11/04, 1 April 2009.

³⁸ Including 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.

³⁹ Where a detained person is thought to be suffering a mental illness/disorder, advice should be sought from a medical professional, social services and appropriate mental health facilities. Service Procedure 32/08 Operational Procedure and Guidance for Dealing with Persons with a Mental Disorder applies.

⁴⁰ Consideration is to be given to wider welfare needs and a decision made as to whether other agencies should be informed. A woman carer must be readily available for detained girls under the age of 17.

⁴¹ In light of a disability, the most appropriate and suitable custody suite should be used, and custody staff must: (i) consider any mutual arrangements with Health Care Provider's assistance, guidance, access to facilities and equipment etc. if appropriate and compliant with a safe system of work; (ii) consult with detainee and those connected with the detainee; (iii) consider welfare arrangements; and (iv) assist persons in a wheel chair.

Arrangements should be made for access to interpreters and translation services in relevant cases.⁴²

The risk assessment also outlines several other control measures to be implemented during detainee processing.⁴³ The custody officer⁴⁴ is required to speak to each detainee and try to determine if he or she is suffering from illness, is taking medication or has a propensity to self harm. Any information obtained or revealed during an interview which may be required to inform a detainee care plan, for example, previous episodes of ill health, incidents of self harm, substance misuse etc., must be reported to a custody officer and custody staff must pay attention to detainees demeanour post interview. All relevant information should be recorded on the NICHE Custody Record Risk Assessment, which is reviewed on an on-going basis and as appropriate whilst the detainee remains in police custody for example after an incident, on receipt of new information or if changes are observed in a detainee's behaviour/demeanour. This Detainee Risk Assessment informs the detainee care plan and all police officers and police staff interacting with the detainee, are made aware of it.

The training programme for civilian detention officers introduced by the PSNI in June 2008 provides training in risk assessment to enable civilian detention officers to contribute to the formal risk assessment process.⁴⁵

Suicide and self harm

The PSNI 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; removal of shoes,

⁴² S.13 of PACE Codes of Practice C refers.

⁴³ 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 or Taser has been used during arrest; (iv) whether the detainee has been searched; and (v) details of any first aid administered or medical treatment received.

⁴⁴ Since February 2007, all officers attending the PSNI custody officer training programme have been trained as risk assessors.

⁴⁵ Letter ACC Operational Support to Policing Board's Human Rights Advisor dated 18 August 2008.

shoelaces and belts whilst in cellular accommodation, regular testing of cell alarms; and regular checking and monitoring of detainees via CCTV. Custody officers can ask solicitors to provide any information relevant to the risk assessment of an individual detainee, and solicitors are required to provide any information that indicates a detainee may be at risk even if they are not specifically asked for the information. As noted above, the risk assessment requires that all relevant information is recorded on the individual Detainee Risk Assessment.

Custody visitors have advised me that they had no concerns in 2008/09 regarding the level of supervision of detained persons who had a history of, or propensity to, self harm. In the 2008 Annual Report, it was recorded that Custody Visitors had expressed 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.⁴⁶ Since then, the Custody Visitors report an improved response by the PSNI and do not report any ongoing concern regarding ligature points in police cells or interview rooms. It should be noted that whilst Custody Visitors have access to all areas of the custody suite, and all associated areas such as food preparation, interview and medical rooms, they do not visit or report upon conditions in solicitor consultation rooms. The PSNI should ensure that a detainee is not left unobserved in a solicitor consultation room.

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"⁴⁷

⁴⁶ Their concerns are corroborated by Custody Visitor reports to the Policing Board over the course of the last year.

⁴⁷ The Detention Centre Rules 2001, SI 2001238, Rule 3(1).

to reflect the circumstances in which immigration detainees have been deprived of their liberty.

Since January 2006, immigration detainees and some asylum seekers are routinely transferred from Northern Ireland to detention facilities in Scotland and England, with the majority transported to Dungavel Immigration Removal Centre in Scotland.⁴⁸ 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 (NIHRC).

In 2007, HM Chief Inspector of Prisons published a report on detainees at Dungavel House Immigration Removal Centre in Scotland.⁴⁹ The report emphasised how transfer across the borders between Scotland, England and Northern Ireland affected both family links and access to legal advice and the courts.⁵⁰ Furthermore, that police custody records were not routinely attached to immigration records.

The NIHRC published a report in April 2009 examining the treatment of immigration detainees.⁵¹ The report is critical of the practice and states:

The investigation found that physical conditions in some of the custody suites in Northern Ireland are wholly unsatisfactory. HM Inspectorate of Prisons has also reported on the many problems relating to Dungavel Immigration Removal Centre, to which many detainees are transported from Northern Ireland in the first instance. While those conditions may not cross the threshold in relation to Article 3 of the ECHR and Article 7 of the ICCPR, the way in which immigration detainees are treated and

⁴⁸ The decision to transport immigration detainees out of Northern Ireland was taken without any form of public consultation.

⁴⁹ *Detainees under escort at Dungavel House IRC, Report on an announced escort inspection 4-8 December 2006*, HM Chief Inspector of Prisons.

⁵⁰ *Ibid.* para.1.6.

⁵¹ *Our Hidden Borders: The UKBA's Powers of Detention*, Human Rights Commission, April 2009

cared for is extremely problematic. Chapters 5 and 6 have shown, in particular, how custody sergeants are often unaware of the legislative basis for the detention. It is questionable how far a custody sergeant can meet his or her duty of care if he or she is not able to tell which one of the detainees is an asylum seeker possibly fleeing persecution and suffering trauma. Further, custody suites in Northern Ireland are not equipped to meet the diverse cultural and linguistic needs of immigration detainees and nor were they ever intended to.⁵²

The NIHRC report makes a number of recommendations. I agree, respectfully, with the NIHRC's recommendations. In so far as the report relates to PSNI practice, it was supportive of the fact that the PSNI had adopted a higher standard in respect of immigration detainees held in police detention and had agreed a protocol with the UK Border Agency (UKBA), which ensured that immigration detainees are provided with the same protection as a PACE detainee. The PSNI have also introduced and secured more stringent recording mechanisms.

However, by an inspection report published in June 2009,⁵³ the Criminal Justice Inspection Northern Ireland raised concerns about the detention of immigration detainees for longer periods before transfer to an immigration centre. It recommended that the PSNI should, together with the UKBA, explore alternatives to the use of police cells for the holding of immigration detainees who are detained for more than 36 hours.⁵⁴ The inspection identified the insufficient number of specialist solicitors available to advise detainees but recognised that interpreting services were good and that the PSNI had adopted creative approaches to overcoming language barriers.⁵⁵

For so long as immigration detainees continue to be held in police cells, I remind the PSNI of the vulnerable position such detainees are in. I commend

⁵² *Ibid.* p.89.

⁵³ *Police Custody: The Detention of Persons in Police Custody in Northern Ireland*, Criminal Justice Inspection NI, 2009.

⁵⁴ *Ibid.* para. 5.3.

⁵⁵ *Ibid.* para. 5.5.

the PSNI for its insistence on affording PACE protections to such detainees and reinforce that the PSNI should continue to provide the same safeguards and protections of PACE. I remind the PSNI of the Memorandum of Understanding between the PSNI and the UKBA.⁵⁶ The Memorandum refers to the Direction given by the Home Secretary on Immigration (Places of Detention) in 2004. Of particular importance, it stipulates that “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 five nights continuously in a police cell... if, for instance, he is awaiting transfer to more suitable... accommodation.”

Between 2006 and 2008, immigration detainees were kept in detention for an average of 1.5 days at a time.⁵⁷ However, I have discussed this issue with Custody Visitors, who report that it is not uncommon for immigration detainees to be kept in detention for periods of five days. This continues despite the Home Secretary’s Direction and the Memorandum of Understanding. Therefore, this year I recommend that the PSNI should report to the Policing Board on a six monthly basis with the number of immigration detainees held in police custody during the relevant period and the length of time spent by each detainee in police custody.

Recommendation 20

The PSNI will report to the Policing Board on a six monthly basis with the number of immigration detainees held in police custody during the relevant period and the length of time spent by each detainee in police custody.

While I recognise that the PSNI has not created this situation but has had it imposed, the concern remains that immigration detainees are being held in circumstances which are clearly inappropriate. The Policing Board will work

⁵⁶ 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.

⁵⁷ *Police Service of Northern Ireland: Review of the Centre of Excellence Custody Strategy*, Deloitte Draft Report, 2008.

with the PSNI to address this issue and attempt to resolve it. I will continue to monitor this and will report further in next year's Annual Report.

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 government.¹

MONITORING PSNI HUMAN RIGHTS AWARENESS AND CULTURE

With the coming into force of the Human Rights Act 1998, all public authorities are under a duty to act in a way which is compatible with the individual rights and freedoms contained within the European Convention on Human Rights. That duty is reflected in Patten recommendation 1 which requires the police service to focus policing on a human rights approach. What Patten anticipated was a police service that respected human rights both in the technical and behavioural sense. Patten also focused on the concept of policing with the community which was to be a core function and philosophy of the police service. Furthermore, the Police (Northern Ireland) Act 2000 requires the police to carry out their functions in co-operation with, and with the aim of securing the support of, the local community.

As the Oversight Commissioner indicated in his final report a human rights culture within the police service is demonstrated by the quality of the interactions between police and public.² The Oversight Commissioner considered how a human rights culture could best be measured. He suggested an assessment of the formal police complaint process, PSNI internal disciplinary mechanisms and also the daily, routine contacts between the PSNI and the public. Most of those initiatives have been incorporated into

¹ Office of the Oversight Commissioner, Report 19, May 2007, p.25.
² *Ibid.* p.26.

the Policing Board's annual human rights monitoring process. However, the effective capture and measurement of a human rights culture is a difficult task but the Policing Board is nonetheless committed to considering it and will receive a further report on the outstanding recommendations in June 2010.

PSNI Human Rights Programme of Action

Since 2005, the PSNI has responded to the Policing Board's Human Rights Annual Report (the Annual Report) by publishing a Human Rights Programme of Action. Each year, the PSNI must consider the contents of the Annual Report and reflect upon the observations and recommendations, advising the Policing Board of its intentions in response to them. In last year's foreword to the Human Rights Programme of Action the then Chief Constable, Sir Hugh Orde, said "It demonstrates our commitment to the continuing development of our understanding and application of Human Rights principles to everyday policing... The Code of Ethics serves as our discipline code and is unique among police services. It integrates the European Convention on Human Rights into police practice, acting as a standard that must be reached and against which officers can be judged."³

It is that commitment to the promotion of human rights, and therefore a move towards a tangible human rights culture and awareness within the police service and in respect of all officers, which stands to be judged.

Evaluation of the integration of human rights standards in PSNI training

Every year since 2005, chapter 2 of the Annual Report has sought to measure the effectiveness of the internal and external evaluation of the PSNI's efforts to integrate and incorporate human rights standards and principles into all PSNI training. Human rights jurisprudence reminds us that the protection of human rights must be practical and effective. That means the police service approach to training must be scrutinised and appraised regularly to ensure all officers understand and apply human rights principles in the course of their daily policing duties. Human rights principles must be understood and 'owned'

³ PSNI Human Rights Programme of Action 2008-2009, p.1.

by all officers and they must be integrated in a meaningful way within all policy and practice.

Every aspect of policing, from stops and searches, making arrests, conducting interviews and securing the crime scene, include human rights. The PSNI has recently recruited an experienced Human Rights Training Adviser who is looking at this whole issue and seeking to advise the PSNI's human rights trainers in order that the integration of human rights into police training is as effective as possible.⁴ Her appointment is very welcome. The PSNI is demonstrating by such an appointment a real commitment to improving human rights awareness within the police service. I have met the PSNI Human Rights Training Adviser on a number of occasions and I am sure her input and evaluation of human rights training will provide an invaluable resource to the PSNI and will permit a structured and thoughtful approach to improving human rights awareness within the service. She will examine training within the Police College and at District level and will report further to the Policing Board in respect of her findings and recommendations.⁵

I will work closely with the Human Rights Training Adviser over the course of the next few months to agree a mechanism for measuring the effectiveness of the revised training. It is important to note that improved training does not necessarily mean additional training but should result in better quality and more directed training, followed by evaluation and appraisal.

Monitoring the use of police powers

A critical aspect of the human rights monitoring framework is the scrutiny applied to the use of police powers. For example, the use of stop and search powers are analysed in detail. The monitoring of the use of these powers informs of the approach of the organisation and the individuals charged with carrying out the stops. The use of such powers necessarily interferes with the human rights of individuals stopped and searched. This is considered in detail in chapter 4 (Operations). In the first two months of 2010, I will be carrying out

⁴ Rebecca Dudley was appointed in July 2009.

⁵ In accordance with recommendation 2 of this Human Rights Annual Report.

a short focused thematic inquiry into the use of stop and search powers and will be reporting to the Policing Board with my findings and recommendations. I wish to record that ACC McCausland has expressed his willingness to engage on this issue and has offered unlimited access to the relevant documents. I welcome that transparency and accountability and recognise the PSNI's willingness to consider critically, for example the proportionality of the exercise of the powers to stop and search.

Monitoring satisfaction levels of victims of crime

The annual quality of service survey, which sets out the level of satisfaction of individuals who have had contact with the PSNI, is a useful indicator of the public's satisfaction with the PSNI and the views of victims of certain crimes. Those statistics are analysed in chapter 10 (Victims).

Police complaints

The monitoring of police complaints through the Office of the Police Ombudsman for Northern Ireland provides further evidence of the incorporation of human rights principles across the police service. That is considered in detail in chapter 6 (Complaints, Discipline and Civil Actions). Importantly, it is the nature of the complaints, as well as the number, which is indicative of the effectiveness of the police service and individual officers. The Police Ombudsman is committed to tackling the issue of officers with multiple complaints and works with the PSNI Professional Standards Department to that end.

CHAPTER 13: POLICING WITH THE COMMUNITY

Policing with the community was central to the Patten Commission's vision; that it should be a core function of the police service and every police station.¹ Furthermore, the Police (Northern Ireland) Act 2000 requires the police to carry out their functions in co-operation with, and with the aim of securing the support of, the local community. It represents a style of policing to meet local community needs; it is not a specialist form of policing. Respect for and protection of human rights is central to a model of policing based upon community consent and police accountability. One depends upon the other. Human rights jurisprudence is clear; the protection of human rights must be practical and effective.

PSNI POLICING WITH THE COMMUNITY STRATEGY

According to an inspection by Criminal Justice Inspection NI in March 2009, the PSNI needs a clear corporate vision of policing with the community and should raise and support its status within the organisation.² The PSNI has responded to that by revisiting the strategy and working on an implementation plan.

On 26 November 2009, the Chief Constable presented the refreshed Policing with the Community Strategy to the Policing Board together with its implementation plan. The Community Engagement Committee of the Policing Board will monitor its implementation.

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. Two of the key responsibilities of the Policing Board's Community Engagement Committee

¹ Recommendation 44 of the Patten Report.

² *Policing with the Community: An Inspection of Policing with the Community in Northern Ireland*, Criminal Justice Inspection Northern Ireland, March 2009.

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.

The Committee receives six monthly progress reports from PSNI Criminal Justice Department. The Committee is assisted in its monitoring role at local level by District Policing Partnerships (DPPs) through the Neighbourhood Policing Framework.³ 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 the 2008 Human Rights Annual Report, it was recorded that policing with the community would no longer be included in subsequent Annual Reports.⁴ However, having discussed this with a number of organisations I have decided to retain this chapter in recognition of the fundamental importance of policing with the community and its impact upon, and relevance to, a human rights based approach by the PSNI. I do not make any recommendations this year but will continue to monitor, in association with the Community Engagement Committee, those aspects of the strategy that involve human rights principles.

³ 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.

⁴ 2008 Human Rights Annual Report, chapter 13, p.213.

CHAPTER 14: PRIVACY AND DATA PROTECTION

The freedom of information and data protection regimes exist to promote openness, provide accountability and ensure data privacy for individuals. They also enable a greater understanding of how public authorities carry out their duties, why they make the decisions they do and how they spend their money. At the same time they seek to ensure that all personal data about individuals is accurate and kept up to date, stored securely and used fairly.

Article 8 of the European Convention on Human Rights (ECHR) provides that everyone has the right to respect for their private and a family life, home and correspondence. Any interference with this right by a public authority will only be justified if it is in accordance with the law and necessary in a democratic society for a legitimate aim.¹ 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 PSNI must comply with the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA) and the Human Rights Act 1998 (HRA). To ensure compliance, the Policing Board monitors PSNI policy, procedure and practice. That is an ongoing process requiring regular review.

DATA PROTECTION

The DPA provides an entitlement, subject to specified exemptions, to find out what personal information is held about an individual by businesses and organisations in the public and private sectors.² It also requires that personal information is:

- Fairly and lawfully processed;
- Processed for specified and lawful purposes;
- Adequate, relevant and not excessive;

¹ 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.

² Data Protection Act 1998, s.7.

- Accurate and up to date;
- Not kept for longer than is necessary;
- Processed in accordance with the rights of the data subject;
- Secure; and
- Not transferred to other countries without adequate protection.³

PSNI data protection policy

The PSNI policy on data protection⁴ applies to all PSNI staff, which includes police officers, support staff, agency staff and contractors. It sets out the eight principles referred to above, and outlines how the PSNI discharges its legal obligations in respect of access to personal data; monitoring compliance; obtaining personal data through non-disclosure exemptions; sharing of personal data; correction and/or erasure; enforcement; retention; and weeding of personal data. The policy recognises that the processing of personal data will involve an interference with Article 8 ECHR (right to respect for private life), which can only be justified if personal data is processed strictly in accordance with the DPA. The policy also stresses that in some cases, unlawful disclosure of information could breach Article 2 ECHR (the right to life) and Article 3 ECHR (freedom from torture, inhuman and degrading treatment).

PSNI data protection training

It was recommended in the 2008 Human Rights Annual Report (the Annual Report) that the PSNI should (i) introduce compulsory e-learning or other training in data protection, information security, freedom of information and records management for all PSNI data protection; and (ii) freedom of information specialist staff 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.⁵

³ *Ibid.*, Schedule 1, Part I.

⁴ PSNI Policy Directive 06/08, Data Protection Policy, 19 June 2008.

⁵ Recommendation 29, 2008 Human Rights Annual Report, pp.217-218.

In response, the PSNI has indicated that PSNI Freedom of Information and Data Protection Staff receive formal training in respect of each discipline and follow the ACPO Manual of Guidance for both Freedom of Information and Data Protection when dealing with requests submitted under either DPA or FOIA. In addition, three members of the Freedom of Information staff, and three members of the Data Protection staff, have undertaken the Information Systems Examination Board Certificate in their respective discipline. Furthermore, the management team (Records Management) have Masters Degree qualifications in the subject.⁶

In recent years the CETIS e-learning training package in both Freedom of Information and Data Protection has been made available to all staff. The PSNI have procured new e-learning programmes in Freedom of Information, Data Protection, Information Security, and Government Protected Marking Scheme. The training programmes have all been quality assured by staff within the relevant PSNI sub-branches, and they will be the subject of mandatory training for all police and police staff from January 2010 onwards. A Records Management e-learning module is also in the process of being developed in conjunction with the Police College.⁷ The effort of the PSNI to meet the recommendations is very positive and the training now in place is very welcome.

I therefore consider recommendation 29 of last year's Annual Report to be implemented in full.

Breaches of the Data Protection Act 1998

Under the DPA 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.⁸ In order to identify officers and members of police civilian staff who commit data protection breaches, random daily audits are conducted electronically by the PSNI's Data Protection Unit.

⁶ Email from PSNI Operational Support Department to Policing Board's Human Rights Advisor dated 24 November 2009.

⁷ *Ibid.*

⁸ Data Protection Act 1998, s.55(1).

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 have advised me that during the period 1 April 2008 to 31 March 2009 no breaches of data protection were revealed during transaction monitoring.⁹

Five members of police support staff have been dealt with for breaching the Data Protection regime in 2008/09. Two were prosecuted resulting in a fine in one case and a conditional discharge in the other. PSNI Professional Standards Department conducted internal investigations in all five cases, resulting in disciplinary action in three cases, resignation in one case and dismissal in one case prior to the outcome of the investigation.

Data protection complaints¹⁰

In 2008/09, ten complaints were made against the PSNI in relation to subject access to personal data. Two of these complaints were made directly to the Information Commissioner.¹¹ Following investigation, no further action was taken against the PSNI. The remaining eight were dealt with internally and no further action was taken. A further three complaints were made to the Information Commissioner in relation to the general processing of personal data and after investigation no further action was taken.

FREEDOM OF INFORMATION

The Freedom of Information Act 2000 (FOIA) provides individuals with the right to request information held by public authorities.¹² Provided the information requested doesn't fall within an exempt category of information,

⁹ Email from PSNI Operational Support Department to Policing Board's Human Rights Advisor dated 21 December 2009.

¹⁰ *Ibid.*

¹¹ The Information Commissioner's Office is a UK wide independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

¹² Freedom of Information Act 2000, s.1.

the public authority must confirm whether they hold the information and must normally provide the information to the applicant within 20 working days.¹³

PSNI publication scheme

In addition to providing information requested under a general right of access, public authorities (which includes the PSNI) are obliged to make information available through a publication scheme¹⁴ which must:

1. Specify classes of information which the public authority publishes or intends to publish;
2. Specify the manner in which information of each class is, or is intended to be, published; and
3. Specify whether the material is, or is intended to be, available to the public free of charge or on payment.

A public authority must publish information in accordance with its publication scheme and review it from time to time.

The PSNI's publication scheme has been in place since 2003, and was updated most recently on 1 January 2009 in accordance with the new publication scheme model for police services in the United Kingdom produced by the Information Commissioner's Office. The new scheme is publically available on the PSNI website and it provides information under seven class headings.¹⁵ However, there is certain information that is not required to be included in the publication scheme, for example, information concerning ongoing investigations, investigative methods, intelligence and the use of related operational techniques. If a request for this type of information is made under the general right of access provided by the FOIA, the PSNI must

¹³ *Ibid.*, ss.1 and 10.

¹⁴ *Ibid.*, s.19.

¹⁵ They are: Who We Are and What We Do; What We Spend and How We Spend It; What Our Priorities Are and How We Are Doing; How We Make Decisions; Policies and Procedures; Lists and Registers; and Services Provided by the Police Service.

consider whether they are obliged to disclose the information or whether an exemption applies. Other considerations such as data protection and human rights principles must also be applied.

INFORMATION COMMISSIONER DECISION AGAINST THE PSNI

It is the duty of the Information Commissioner to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements laid down in the Freedom of Information Act 2000. The Commissioner issued a Decision Notice against the PSNI in October 2007¹⁶ and the PSNI in turn 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. The review was conducted in liaison with the Information Commissioner and resulted in a 22 point action plan being drawn up. It was reported in the 2008 Annual Report that whilst work still remains to be done to implement the PSNI's 22 point action plan, the Information Commissioner was satisfied, overall, with PSNI progress to date and was continuing to monitor PSNI activities to ensure key developments in records management and freedom of information are implemented.

During the 2008/09 reporting period there were no decisions issued against the PSNI by the Information Commissioner in respect of data protection or freedom of information.¹⁷

RECORDS MANAGEMENT

In order to comply fully with the Data Protection Act 1998 and the Freedom of Information Act 2000 it is vital that the PSNI maintain their records in an

¹⁶ Discussed in more detail in the 2008 Human Rights Annual Report, chapter 14, pp. 223 to 225.

¹⁷ Email from PSNI Operational Support Department to Policing Board's Human Rights Advisor dated 21 December 2009.

orderly and efficient manner. Effective records management ensures that records are easily located, accessed and retrieved, information is better protected and more securely stored, and records are archived or disposed of safely and at the right time.

The PSNI policy on records management¹⁸ was updated in 2009 and applies to all records created or received by the PSNI. The PSNI Records Management Unit monitors the compliance at District and Department level with the policy.¹⁹ The policy provides that all staff, upon joining the PSNI, will be provided with training in the creation and management of records as part of their induction programme, and it requires that audits are conducted on a regular basis to ensure that all aspects of folder and record creation and management are being adhered to.

PSNI Records Management Unit has developed a methodology for (i) an information audit, and (ii) a notebook and journal compliance audit. A pilot of the latter has been carried out in one police district and this will serve to inform the process and carrying out of subsequent audits across the service.

POLICE RETENTION OF OLD CRIMINAL RECORDS

In November 2007, the Office of the Information Commissioner issued five police forces²⁰ with Enforcement Notices requiring them to delete old criminal conviction data as their retention was deemed to be excessive for policing purposes. On appeal to the Information Tribunal, it was held that the decision of the Office of the Information Commissioner was correct and that the retention of old convictions data by police forces is in breach of the Data Protection Act 1998.²¹ The Tribunal found that Article 8 ECHR (right to private

¹⁸ PSNI Policy Directive 06/04, Records Management Policy, 4 October 2004.

¹⁹ The role of the Records Management Unit is discussed in detail in the 2007 Annual Report, chapter 14, pp. 273 - 274.

²⁰ Humberside, Northumbria, Staffordshire, Greater Manchester and West Midlands Police.

²¹ 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.

and family life) 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.

It was therefore recommended in the 2008 Annual Report 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.²² The Appeal Court, however, gave its judgment on 19 October 2009 in which it was held that the retention of criminal convictions is a matter of discretion for each Chief Constable.²³ The PSNI has decided not to weed records of criminal convictions from the PSNI system or from the Police National Computer.

On that basis, I consider recommendation 30 of the 2008 Annual Report to have been implemented in full. However, I will continue to monitor developments and report further.

²² Recommendation 30, 2008 Human Rights Annual Report, p.229.

²³ *Chief Constables of Humberside, Staffordshire, Northumbria, West Midlands and Greater Manchester Police v The Information Commissioner & Secretary of State for the Home Department* [2009] EWCA Civ 1079.

CHAPTER 15: CHILDREN AND YOUNG PEOPLE

This year, the Policing Board's Human Rights and Professional Standards Committee has chosen to focus more closely on the issues covered in this chapter. On the Committee's behalf I have commenced a thematic inquiry into the issues and will report separately in early 2010. As a result, this year the issues relevant to children and young people will be dealt with by a dedicated thematic report, which will be published in early 2010. I will make any necessary recommendations in that report.

However, I take this opportunity to remind the PSNI that it must always deal with children and young people in a way which reflects appropriately their vulnerability and with an awareness of the issues they face. The PSNI should include reference to the rights, vulnerabilities and issues faced by children and young people in operational briefings relating to all operations involving children and young people.¹ 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 years² and the European Convention on Human Rights applies equally to children as it does to adults.

Thematic inquiry

In broad terms, the thematic inquiry will include:

1. The Policing of Anti-Social Behaviour including Anti-Social Behaviour Orders and a consideration of the 'naming and shaming' practice adopted in England and Wales, which may extend to Northern Ireland;
2. Police Practice and policy regarding the dispersal of groups of Young People, Public Order and Crowd Control, Stop and Search and other powers to control the activities of Children and Young People. Regard will be had to Community Engagement, Strategic Planning and Community Safety Issues; and

¹ The PSNI has addressed that in its revised policy on policing children and young people.

² The Convention includes four categories of rights: survival, protection, development and participation.

3. Alternatives such as Diversionary Disposals and Community Restorative Justice.

The inquiry will not be limited strictly to the above but will deal with issues as they arise during the consultation stage of the inquiry. Other issues, such as the use of children and young people as Covert Human Intelligence Sources (CHIS), the use of Attenuating Energy Projectiles (AEP) and Taser and, the retention of DNA material is considered in their respective chapters.

APPENDIX 1: 2009 RECOMMENDATIONS

HUMAN RIGHTS ANNUAL REPORT RECOMMENDATIONS 2009	
CHAPTER 1: THE PSNI PROGRAMME OF ACTION	
	No recommendations.
CHAPTER 2: TRAINING	
1.	The PSNI should appoint a PSNI Human Rights Trainer to work within the Police College and in partnership with the Human Rights Training Adviser. In the event that the PSNI does not appoint a PSNI trainer, it should present an alternative proposal for ensuring operational input into training and support for the Human Rights Training Adviser within two months of the publication of this report.
2.	The Human Rights Training Adviser should report to the Policing Board within six months of the publication of this report with her analysis of the training materials and advise the Policing Board whether she is satisfied that existing training materials are audited on a regular basis and that all new courses have human rights principles adequately integrated within them.
3.	The PSNI should provide the Policing Board's Human Rights Advisor with a schedule of all new District training courses devised since April 2008, together with course outlines and materials. That schedule should be provided forthwith.
4.	The PSNI internal evaluation team should evaluate the integration of human rights principles in the practical aspects of PSNI personal safety training courses within three months of the publication of this report.
5.	The Human Rights Training Adviser should, as part of her report to the Policing Board set out in Recommendation 2 of this report, include her findings in respect of human rights refresher training.
CHAPTER 3: POLICY	
6.	The PSNI should provide the Policing Board with details of all Policy Directives and Service Procedures that are overdue for review by more than one year and include within that briefing the reason for the delay and the date by which the review is to be completed. The first briefing should be presented within three months of the publication of this report and thereafter on an annual basis.
7.	The PSNI should review its policy in respect of applications to have DNA material, profiles and fingerprints removed from the database and report its findings to the Policing Board. That review should make reference to Article 8 of the ECHR and include expressly, consideration of the rights of children and young people. The PSNI should report within three months of the publication of this report. The PSNI should set out its findings as to whether, and if so why, the policy is necessary and proportionate.
CHAPTER 4: OPERATIONS	
8.	The PSNI should provide to the Policing Board's Human Rights Advisor, within three months of the publication of this report, an explanation of the processes currently in place, outlining how they secure the

	protection of human rights and, by cross reference, indicate how they adopt, in substance, the best practice contained within the Coleraine DCU policy and planning log.
9.	The PSNI should analyse its figures for stop and search and stop and question under the Police and Criminal Evidence (Northern Ireland) Order 1989, the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007, considering in particular whether the powers used are justified, necessary and proportionate. The first analysis should be presented to the Policing Board in the 3 rd financial quarter of the year and thereafter on an annual basis.
CHAPTER 5: CODE OF ETHICS	
	No recommendations.
CHAPTER 6: COMPLAINTS, DISCIPLINE AND CIVIL ACTIONS	
10.	The PSNI should investigate the behaviour or conduct resulting in the high number of Superintendents' Written Warnings under sub-Articles 1.1 (the duty to protect life and property, preserve order, prevent commission of offences and bring offenders to justice), 1.5 (the duty to obey all lawful orders and refrain from carrying out unlawful orders) and 2.1 (the duty to conduct investigations in a thorough, fair and impartial manner), of the Code of Ethics and report to the Policing Board with its findings within six months of the publication of this report.
CHAPTER 7: PUBLIC ORDER	
11.	When supplying the Policing Board with six monthly statistics on the use of force recorded on the electronic use of force monitoring form, the PSNI will provide details of any correlation between high incidents of usage and public disorder events.
CHAPTER 8: USE OF FORCE	
12.	The PSNI should work with the Human Rights Advisor to the Policing Board to conduct a further review of all training manuals and lesson plans and address specifically the interests of the child in any operation which may involve the use of force. The PSNI should, following completion of the review, but in any event within six months of the publication of this report, present its findings to the Policing Board's Human Rights and Professional Standards Committee.
13.	The PSNI should consider amending Service Procedure 6/2008, Guidance Notes, paragraph 10.3 to make clear that use will be justified where the officer honestly and reasonably believes that it is immediately necessary to use Taser to prevent or reduce the likelihood of recourse to lethal force.
14.	The PSNI should, using the electronic use of force monitoring form, carry out an annual review of all uses of force and report to the Policing Board with its findings. The report should track and trend the use of force across all PSNI Districts and consider what steps are taken to address any issues arising. The first report should be provided to the Policing Board within six months of the publication of this report.
CHAPTER 9: COVERT POLICING	
15.	The PSNI should report to the Policing Board within three months of the publication of this report on the progress of its implementation of the overarching policy. That report should provide an explanation for any further delay.

CHAPTER 10: VICTIMS	
16.	The PSNI should disseminate the June 2009 report, <i>Hate crime against people with disabilities: a baseline study of experiences in Northern Ireland</i> , Institute for Conflict Research, to all relevant officers within the PSNI with a view to informing policy and practice. The PSNI should report to the Policing Board within six months of the publication of the 2009 Human Rights Annual Report, on measures to be taken to implement the recommendations.
17.	The PSNI internal evaluation team should evaluate student officer's training on victims and witnesses as a matter of priority within the next cycle of evaluation and report to the Policing Board on its findings.
CHAPTER 11: TREATMENT OF SUSPECTS	
18.	Each Regional ACC should inform PSNI Operational Support Department, who in turn will notify the Custody Visiting Scheme Administrator, when a designated custody suite is closed and when it is subsequently re-opened.
19.	The Policing Board, in consultation with Custody Visitors, should consider an alternative means of ensuring that Custody Visitors have a line of communication with District Commanders through the Custody Visiting Scheme in association with the relevant Committees of the Policing Board.
20.	The PSNI will report to the Policing Board on a six monthly basis with the number of immigration detainees held in police custody during the relevant period and the length of time spent by each detainee in police custody.
CHAPTER 12: HUMAN RIGHTS AWARENESS IN THE PSNI	
	No recommendations.
CHAPTER 13: POLICING WITH THE COMMUNITY	
	No recommendations.
CHAPTER 14: PRIVACY AND DATA PROTECTION	
	No recommendations.
CHAPTER 15: CHILDREN AND YOUNG PEOPLE	
	No recommendations.

**APPENDIX 2: STATUS OF IMPLEMENTATION OF 2008
RECOMMENDATIONS AND OUTSTANDING 2007
RECOMMENDATIONS**

Human Rights Annual Report Recommendations 2008 and Outstanding 2007 Recommendations					
		Full	Part	Outs.	W/D
CHAPTER 1: THE PSNI PROGRAMME OF ACTION					
2008 Recommendations					
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.	X			
CHAPTER 2: TRAINING					
2008 Recommendations					
2.	The PSNI should recruit a human rights training adviser without delay.	X			
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.			X	
4.	The PSNI should put in place the regulatory framework for a bi-annual audit of training materials within the next six months.				X
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.			X	
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.				X
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.	X			

		Full	Part	Outs.	W/D
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.				X
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.	X			
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.		X		
CHAPTER 3: POLICY					
2008 Recommendations					
11.	The PSNI should complete its internal review of <i>all</i> current policy directives and service procedures by the end of December 2008 and formally report to the Policing Board in January 2009.	X			
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.	X			
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.	X			
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.	X			

		Full	Part	Outs.	W/D
CHAPTER 4: OPERATIONS					
2008 Recommendations					
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.	X			
2007 Recommendations					
10.	The PSNI should consider adopting Coleraine DCU's policy and deployment log as its standard operational planning log.	X			
CHAPTER 5: ADHERENCE TO THE CODE OF ETHICS					
2008 Recommendations					
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.	X			
CHAPTER 6: COMPLAINTS, DISCIPLINE AND CIVIL ACTIONS					
2008 Recommendations					
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.	X			
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.				X

		Full	Part	Outs.	W/D
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.	X			
CHAPTER 7: PUBLIC ORDER					
2008 Recommendations					
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.	X			
CHAPTER 8 USE OF FORCE					
2008 Recommendations					
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.	X			
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.”				X
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.	X			
2007 Recommendations					
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

		Full	Part	Outs.	W/D
CHAPTER 9: COVERT POLICING					
2008 Recommendations					
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.		X		
CHAPTER 10: VICTIMS' RIGHTS					
2007 Recommendations					
35.	The PSNI internal evaluation team should evaluate the PSNI's student officer training on victims and witnesses.				X
CHAPTER 11: TREATMENT OF SUSPECTS					
2008 Recommendations					
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.	X			
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.	X			
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.				X
28.	The PSNI and the Policing Board should agree a process to allow Custody Visitors to inspect non-designated places of detention.				X

		Full	Part	Outs.	W/D
CHAPTER 14: PRIVACY AND DATA PROTECTION					
2008 Recommendations					
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.	X			
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.	X			

APPENDIX 3: HUMAN RIGHTS ANNUAL REPORT RECOMMENDATIONS 2005 - 2008

Summary of Overall Status of Implementation of Recommendations

	Implemented in full	Implemented in part	Withdrawn	Outstanding	Totals
2008 recommendations	19	2	7	2	30
2007 recommendations	38	0	6	0	44
2006 recommendations	42	0	3	0	45
2005 recommendations	56	0	4	0	60
Totals	155	2	20	2	179



Alyson Kilpatrick BL

Alyson Kilpatrick studied law at Queens University Belfast, the Inns of Court School of Law in London and the College of Europe in Bruges, where she studied advanced European law. She was called to the Bar of England and Wales (Middle Temple) in 1992 and was a founding member of Arden Chambers. From 1993, she practised from Chambers in London and Manchester until her return to Northern Ireland in 2008, from where she is now in private practice. Alyson has extensive experience of litigation in the higher courts, representing a wide variety of clients including public authorities, the voluntary sector, charities and individuals, where she concentrated on public law and human rights cases with a particular emphasis on cases concerning the protection of individuals' rights. Alyson represented the objectors at the Westminster ('Homes for Votes') Audit Inquiry, which investigated gerrymandering and malfeasance in public office, resulting in the surcharge of council members and officials. Between 2005 and 2007, she was junior counsel to the Robert Hamill inquiry.

Throughout her practice, Alyson has published extensively. For example, as contributor to *The Human Rights Act 1998: A Practitioner's Guide* (Sweet and Maxwell) and the author of *Discrimination in Housing Law* (Lemos & Crane). She was engaged to provide training to public authorities on the implementation of the Human Rights Act, the law on homelessness and the anti-social behaviour (ASBO) legislation. Due to her specialist interest in the latter, she contributed to the Panorama Special Investigation *ASBOs on Trial*. She is regularly invited to speak at conferences on legal practice and procedure involving human rights, the rights of Irish Travellers, policing and

criminal justice and the rights of the homeless. In 2009, Alyson was invited to be a member of the Irish Government's delegation to Timor Leste on United Nations Security Council Resolution 1325 (women, peace and security), where she spoke on policing and security.

Alyson is a Commissioner on the Future of Housing in Northern Ireland and is a Director of the Simon Community Northern Ireland. In January 2009, she was appointed independent Human Rights Advisor to the Policing Board and has since authored the Board's first thematic inquiry, which considered amongst other things the PSNI response to domestic abuse incidents.



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NORTHERN IRELAND POLICING BOARD**

Waterside Tower, 31 Clarendon Road,
Clarendon Dock, Belfast, BT1 3BG

Tel: +44 (0) 28 9040 8500

Fax: +44 (0) 28 9040 8544

Textphone: +44 (0) 28 9052 7668

Email: information@nipolicingboard.org.uk

Website: www.nipolicingboard.org.uk

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