

# How Public Order Policing Works in Northern Ireland:

## *Standards and Accountability*

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Committee on the  
Administration of  
Justice



**CAJ**

Committee on the  
Administration of Justice

Promoting Justice / Protecting Rights

## **Community Relations Council**



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## **About CAJ**

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation working for human rights and affiliated to the International Federation of Human Rights (FIDH). CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. Our specific focus is on those human rights issues which are directly relevant to conflict and peace. This includes relevant economic, social and cultural rights as well as civil and political rights. We are concerned to combat impunity for violations in the past, guarantee non-recurrence by working for contemporary accountability, promote a rights based framework for the exercise of the freedoms of expression and assembly, advocate the application of the fundamental principles of equality and promulgate the benefits of a rights based society.

The CAJ works closely with other domestic and international human rights groups and makes regular submissions to a number of United Nations and European bodies established to protect human rights. CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and strategic litigation.

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## **How Public Order Policing Works in Northern Ireland – Introduction**

This document attempts to give an account of the standards to which the Police Service of Northern Ireland aspires when carrying out public order policing and some of the issues that arise. These standards are to be found in domestic legislation, a series of police guidance documents and international human rights instruments, primarily the European Convention on Human Rights. The complexity created by the intersection of these various formulations of standards is perhaps one reason why the police sometimes find it difficult to explain exactly what a human rights based approach to public order policing entails and why the public may find it hard to understand.

The project of working through the standards to create a coherent narrative is designed to identify decision points and the mechanisms through which the police are accountable for their decisions and actions. The hope is that any clarity achieved will reduce the scope for generalised accusations of political influence or bias and encourage critics to focus on the precise ways in which they think police decisions or actions were wrong. This should improve accountability both in identifying clearly where and how the police get things wrong and also a clear defence and rationale for decisions and actions which are right, albeit unpopular.

How the freedoms of expression and assembly are protected, facilitated and regulated are measures of the condition of the rule of law and its reliance on human rights standards in any society. In Northern Ireland, given our history and contemporary reality, the issue takes on particular importance. In a divided society, the benefits of a human rights approach include the fact that it provides an over-arching framework that transcends the particular perspective at any time of the two main communities. By making clear the human rights basis that should, and is claimed to underlay public order policing, it is hoped to help prevent this issue from threatening community relations and assist positively in a consensual approach to parading and protests.

The twin pillars of a human rights based approach are clear standards and effective accountability mechanisms that ensure they are met. In these documents we have tried to identify the standards and accountability mechanisms that apply in general, before a public event, on the day and after the event. There is a basic principle underlying all the detailed standards which is that no infringement of qualified rights can take place except where it is lawful, in pursuit of a legitimate aim, necessary and proportionate. This can be described as the “human rights test” and should be the foundation of decision making in public order policing.

The test is elaborated on in the Authorised Professional Practice document for public order (Note 3) in relation to restrictions on parades and associated protests and is both a useful explanation and is, as it were, in the police’s own words. It reads:

### **Restricting the right to peaceful protest**

The rights and freedoms provided under the Human Rights Act, Articles 9, 10 and 11 ECHR are qualified rights. This means that they may be interfered with or restricted in certain circumstances if necessary and for a legitimate aim. Restrictions can be imposed on the freedoms of belief, expression and peaceful assembly provided any such restriction is:

- prescribed by law
- in pursuit of one or more legitimate aims specified in paragraph 2 of the Article in question
- necessary and
- proportionate

A restriction on a peaceful protest will not satisfy the requirement that it should be necessary in a democratic society just because the majority are in favour of it. A balance which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position must be achieved.

**Principle of proportionality**

This principle requires there to be a link between the purpose for the restriction and the measures employed to achieve that purpose.

***Considerations***

- Is the purpose sufficiently important to justify the restriction (i.e. are there relevant and sufficient reasons to justify the restriction)?
- Will the measures proposed achieve that purpose?
- Are the measures to be taken the least restrictive to achieve the intended purpose?
- Are the restrictions to ECHR rights necessary to meet the legitimate aims set out in the ECHR rights concerned?

If the answer to all four questions is **yes**, then the conditions imposed on a public procession or associated protest under the Public Processions (Northern Ireland) Act 1998 will be proportionate.

In this document, Level 1 is in tabular form and focuses on the accountability mechanisms available at each stage and Level 2 hopes to provide sufficient detail to be a working guide to the public order policing process.

## How Public Order Policing Works in Northern Ireland – Level 1

### 1. General

Issue or stage in process	Law or standard	Accountability mechanism or relevant information
<b>1.1 PSNI Code of Ethics</b>	All actions of police officers should be informed by the Code of Ethics which is written and reviewed by the Policing Board <sup>1</sup> - specifies a duty to preserve order and to act within human rights standards	Breach of the Code may be the subject of disciplinary or criminal charges subsequent to investigations carried out by the PSNI or the Police Ombudsman (PONI)
<b>1.2 Policing with the Community</b>	PSNI regard this policy as being at the heart of all policing including public order situations <sup>2</sup>	The policy implies close contact with community leaders and other local interests
<b>1.3 Principles of Public Order Policing</b>	PSNI has adopted the guidelines for Authorised Professional Practice for Public Order (APPPO), developed by a number of police agencies and published by the College of Policing. <sup>3</sup> The PSNI has also developed its own “PSNI Manual of Policy, Procedure and Guidance on Conflict Management,” which was de-restricted from November 2014 and is to be read in conjunction with the APPPO	APPPO is a public document and the police service can be held accountable for following its detailed operational guidelines. The Conflict Management Manual (PSNI Manual) <sup>4</sup> is also now a public document and sets out important detailed standards including how police will deal with situations where streets are obstructed by protests
<b>1.4 Right to Freedom of Peaceful Assembly</b>	ECHR <sup>5</sup> Articles 9 (freedom of thought, conscience and religion), 10 (freedom of	These provisions can be seen as the starting point for public order policing – the police have a negative duty not to

<sup>1</sup> Police Service of Northern Ireland, ‘Code of Ethics’ (*NI Policing Board*, 2008)

<[http://www.nipolicingboard.org.uk/final\\_code\\_of\\_ethics-2.pdf](http://www.nipolicingboard.org.uk/final_code_of_ethics-2.pdf)> accessed 5th May 2015

<sup>2</sup> PSNI, ‘Policing with the Community Strategy 2020’ <[www.psnipolice.uk/pwc\\_-\\_2020\\_v2.pdf](http://www.psnipolice.uk/pwc_-_2020_v2.pdf)> accessed 6th May

<sup>3</sup> College of Policing (2014) Authorised Professional Practice (*College of Policing*, 1st February 2014) <<http://www.app.college.police.uk/app-content/public-order>> accessed 5th May 2015 (APPPO)

<sup>4</sup> PSNI, ‘Police Service of Northern Ireland Manual of Policy, Procedure and Guidance on Conflict Management’ (PSNI, November 2014) <[http://www.psnipolice.uk/index/about-us/publications/publications-by-category/policies\\_and\\_service\\_procedures/policies\\_and\\_procedures\\_conflict\\_management\\_manual.htm](http://www.psnipolice.uk/index/about-us/publications/publications-by-category/policies_and_service_procedures/policies_and_procedures_conflict_management_manual.htm)> accessed 5th May 2015

<sup>5</sup> European Convention on Human Rights (ECHR)

	expression) and 11 (freedom of assembly and association) form the basis of an individual’s right to assemble with others for the purposes of protest or other lawful activity	hinder peaceful assembly except when necessary and permitted and a positive duty to protect those who wish to exercise their rights peacefully These rights are incorporated in UK law through the Human Rights Act 1998
<b>1.5 The National Decision Model</b>	This is a structured model for a decision-making process to which the PSNI should adhere	Significant decisions should be recorded by the appropriate police officers and the record is then available for post-event review. <sup>6</sup> The fact that decisions should be taken in a standard way and recorded can be seen as an important aspect of accountability
<b>1.6 Domestic Legal Framework</b>	<p>The police have statutory powers and duties in relation to the policing of public processions, related protests and open-air public meetings, including those set out in the:</p> <p><a href="#">Public Processions (Northern Ireland) Act 1998</a></p> <p><a href="#">Public Order (Northern Ireland) Order 1987</a></p> <p><a href="#">Police and Criminal Evidence (Northern Ireland) Order 1989</a></p> <p>parts of the <a href="#">Criminal Justice and Public Order Act 1994</a> which extend to Northern Ireland</p> <p><a href="#">Criminal Law Act (Northern Ireland) 1967</a>.</p> <p>The police also have common law powers and duties including powers to prevent breaches of the peace.<sup>7</sup></p>	The police service must operate within the law and the relevant legislation governs their powers – any action outside the legal framework will be challengeable in the courts. The PSNI Manual also makes clear that police officers must take account of the Code of Ethics and the provisions of the ECHR throughout engagement with a public order event

<sup>6</sup> APPPO - College of Policing (2014) *National Decision Model* [Internet].  
<<https://www.app.college.police.uk/app-content/national-decision-model/the-national-decision-model/>>  
accessed 6th May 2015

<sup>7</sup> APPPO - College of Policing (2014) : *Legislative variations for Northern Ireland* [Internet].  
<<https://www.app.college.police.uk/app-content/public-order/core-principles-and-legislation/legislative-variations-for-northern-ireland/>> accessed 5th May 2015

## 2. Before the Event

Issue or stage in process	Law or standard	Accountability mechanism or relevant information
<b>2.1 Definition of an Event</b>	The PSNI Manual defines an event as: A public event includes any event or incident, and can range from routine operational policing through to major disorder, where a degree of planning for such an event is necessary and applicable, and therefore a comprehensive audit trail is required	The four main categories of event identified are: Disorder associated with spontaneous incidents Single issue protests Lawful public events including notified parades and protests Unlawful public events <sup>8</sup>
<b>2.2 Starting point for policing public protest: the presumption in favour of peaceful assembly</b>	An important principle - the police have a duty to help (facilitate) people to exercise their right to freedom of assembly. However, in Northern Ireland the responsibility to look at public parades and related protests in advance, and to judge whether any restrictions are necessary, has been given to the Parades Commission, though the PSNI retains an important role both in receiving notification and providing information to the Parades Commission	The starting point for all processes of accountability – note, however, that only <i>peaceful</i> protest or exercise of freedom of assembly is protected
<b>2.3 Notification of Parades and Related Protests</b>	Under the <a href="#">Public Processions (Northern Ireland) Act 1998</a> , organisers of public processions and related protest meetings are required to provide notice to the PSNI including	In “sensitive” cases, the PSNI will be asked for a detailed report. This must be provided on Form 11/9, which requires a detailed analysis of the human rights implications (including engagement of competing rights) as well as practical information about the planned parade or protest. <sup>9</sup> Therefore, although the

<sup>8</sup> PSNI Manual (n 4) Para. 13.11

<sup>9</sup> A version of this form, detailing the headings under which information must be given and an indication of the nature of considerations to be taken into account, can be found at Annex A, Appendix B, of; PSNI Service Procedure 14/2008 (2009) <[http://www.psni.police.uk/service\\_procedure\\_1408.pdf](http://www.psni.police.uk/service_procedure_1408.pdf)> accessed 5th May 2015

	<p>specified information. Failure to provide such notice results in the organisers and participants committing an offence, but does not render the public procession/protest unlawful in itself. Detailed guidance on this matter is contained in <a href="#">PSNI Service Procedure 14/2008 (amended 9/6/11)</a></p> <p><b>See Level 2 for the detailed human rights based test for restrictions on peaceful assembly</b></p>	<p>decision is for the Parades Commission, the PSNI must take into account similar considerations in providing information to the Commission</p> <p>An important element of accountability is that the PSNI have decided that both Form 11/9 and any post-parade report to the Parades Commission (which must be made in respect of a parade or protest that has had restrictions placed upon it or at which there was any disorder) will be shared with “any interested parties.”</p> <p>Note that only the Secretary of State has power to ban parades – see Level 2</p>
<b>2.4 Static Meetings or Protests</b>	<p>There is no notification requirement in Northern Ireland for a static meeting or protest as long as it is not a protest against a notifiable parade <a href="#">Article 4</a> of the Public Order (Northern Ireland) Order 1987 gives the police the power to impose directions on persons organising or taking part in an open-air public meeting such conditions as to the place at which the meeting may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent disorder, damage, disruption or intimidation</p>	<p>Any such restrictions must be within the law and follow the human rights tests</p>
<b>2.5 Communication</b>	<p>Effective communication between protest organisers, participants and the police is vital to facilitating peaceful protest<sup>10</sup> and a plan should be developed for major events</p>	<p>A lack of reasonable communication with organisers, protesters, the crowd (on the day) and the affected public may be grounds for complaint about police conduct</p>

<sup>10</sup> APPPO - College of Policing (2013) : *Communication* [Internet]. <<https://www.app.college.police.uk/app-content/public-order/planning-and-deployment/communication/>> accessed 6th May 2015

<p><b>2.6 Planning</b></p>	<p>Plans for major events will consist of the “Gold” strategic plan, the “Silver” tactical plan and the “Bronze” operational plan. At the first Strategy Meeting an Event Policy Book should be opened. This will record every decision made during the entire course of the event and will form part of the Event File.<sup>11</sup> Where relevant a Senior Investigating Officer (SIO) should be appointed and attend the Strategy meeting</p>	<p>It is unlikely that the plans of the PSNI for any public order event would be made public. However, they might be disclosable in any legal proceedings and will be available for inspection by regulatory bodies. The Event Policy Book will be a crucial aspect of post-event accountability</p>
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### 3. On the Day

Issue or stage in process	Law or standard	Accountability mechanism or relevant information
<p><b>3.1 Command</b></p>	<p>The Gold, Silver and Bronze hierarchy of command is used by the PSNI The commanders of Police Support Units (PSU) will also play an important role</p>	<p>The Bronze commander will take operational decisions on the day and will be the source of authoritative communication</p>
<p><b>3.2 Units Potentially Involved</b></p>	<p>Tactical Support Groups (TSGs) or Police Support Units (PSUs) will be the main units deployed if disorder threatens</p>	<p>Roughly half of public order-trained officers (total in PSNI 1,400) are full-time members of TSGs, the rest are part-time members of PSUs in addition to their normal roles</p>
<p><b>3.3 Communication</b></p>	<p>The police may use community mediators and/or identified contact officers as a method of communicating with relevant people, including the “crowd” on the day</p>	<p>Again, lack of effective communication on the day may be a ground for complaint about police action</p>
<p><b>3.4 The Disorder Model</b></p>	<p>The Disorder Model is a way of conceptualising levels of disturbance to public order</p>	<p>The concepts and descriptions of levels of disorder provide a way of understanding police thinking and their perceptions will be challengeable after the event</p>

<sup>11</sup> PSNI Manual (n 4) Para. 13.29

<p><b>3.5 The Use of Force – Law and General Principles</b></p>	<p>The Criminal Law Act (Northern Ireland) 1967, the Police and Criminal Evidence (Northern Ireland) Order 1989 and the Criminal Justice and Immigration Act 2008 and the rights and freedoms contained within the <a href="#">ECHR</a> govern the police use of force</p>	<p>The APPPO requires the police to undertake a detailed analysis of human rights and domestic law to justify the use of force and stresses that the excessive use of force is unlawful.</p> <p>The detailed guidelines will provide a mechanism for accountability for any particular incident</p>
<p><b>3.6 Use of Force – European Court of Human Rights</b></p>	<p>The Court has made a distinction made between the use of force which is intended to be lethal, or as a result of which death occurs, and other uses of force. <a href="#">Article 2</a> will be invoked whenever death occurs at the hands of the state (or serious injury in a situation where death could have occurred) irrespective of the police contact or type of force or weapon used</p>	<p>The European case law gives quite detailed guidelines on the use of force, especially potentially lethal force.</p> <p>McCann and Others v United Kingdom (1995) held that force intended to be lethal can only be used where it is absolutely necessary</p>
<p><b>3.7 Use of Force – PSNI Practice and Guidance on Specific Tactics</b></p>	<p>PSNI Manual Chapter 4 contains policy on the use of various weapons or methods by the PSNI while APPPO also contains some policies still in force for the PSNI<sup>12</sup></p>	<p>See Level 2 for PSNI Manual and APPPO guidance on specific “tactical options” and the annual Human Rights Reports of the NI Policing Board</p>
<p><b>3.8 Freedom of Expression</b></p>	<p>Freedom of Expression is the foundation of “free speech” and is usually protected. However, there may be occasions when persons overstep their rights to freedom of belief and expression and, through the public expression or publication of their views, opinions or beliefs, commit criminal offences</p>	<p>There are statutory limitations on the freedom of expression and the common law offence of breach of the peace (see below) .</p>
<p><b>3.9 Protest Activity in Public Thoroughfares</b></p>	<p>Chapter 13 (Public Order) of the PSNI Conflict</p>	<p>The section goes some way to providing more certainty as to what activity will be</p>

<sup>12</sup> APPPO - College of Policing (2014) : *Tactical options* [Internet]. <<https://www.app.college.police.uk/app-content/public-order/planning-and-deployment/tactical-options/>> accessed 6th May 2015

	<p>Management Manual has a section on “procedures and guidance on protest activity in public thoroughfares.”</p> <p>The PSNI Manual lists the statutory legal powers available to the police.<sup>13</sup></p> <p>Breach of the peace is an additional common law offence</p>	<p>regarded unlawful. The PSNI Manual suggests that officers work with the organisers and facilitate a protest for a reasonable time but may then order them to cease obstructing the thoroughfare. If there is non-compliance force may then be used to move protesters and arrests might be made. The PSNI Manual urges caution in using breach of the peace as its use may involve a breach of the ECHR</p>
<p><b>3.10 Incitement and Hate Expression</b></p>	<p>Offences of intentional harassment, alarm or distress</p> <p>Applicable offences are those of:</p> <p>Provocative conduct (<a href="#">Article 19(1)</a> of the Public Order (Northern Ireland) Order 1987)</p> <p>Threatening, abusive or insulting behaviour (<a href="#">Article 9(1)</a> of the Public Order (Northern Ireland) Order 1987)</p> <p>Hindering participants in a public procession (<a href="#">section 14</a> of the Public Processions Northern Ireland Act 1998).</p> <p>Incitement to hatred: <a href="#">Article 8</a> and <a href="#">Article 9(1)</a> of the Public Order (Northern Ireland) Order 1987.</p>	<p>ECHR Article 10(1) protects in substance and form a right to freedom of expression which others may find insulting or offensive. Individuals taking part in a peaceful protest will only come within the terms of the relevant offences where their conduct moves into the realms of provocative, threatening or other behaviour as set out in respect of each offence</p> <p>Sectarian hate expression is explicitly outlawed under the category of religious belief and implicitly under race and nationality In the Public Order (Northern Ireland) Order 1987.</p>
<p><b>3.11 Supporting or Glorifying Terrorism</b></p>	<p><a href="#">Section 1</a> of the Terrorism Act 2006 makes it an offence to publish, or cause another to publish, a statement intending members of the public to be directly or indirectly encouraged to commit, prepare or instigate acts of</p>	<p>This offence includes every statement which glorifies the commission or preparation of such acts or offences “whether in the past, in the future or generally” (S1 (3)(a) – this aspect may have particular significance in Northern Ireland</p>

<sup>13</sup> PSNI Manual (n 4) Para. 13.108 - 13.110

	terrorism, or being reckless as to whether such a result will occur.	
<b>3.12 Other Public Order Offences</b>	<p>Part IV of the Public Order (Northern Ireland) Order 1987 lists a number of miscellaneous public order offences including wearing a uniform in public.</p> <p>The Public Processions (Northern Ireland) Act 1998 makes it an offence to organise or participate in an un-notified parade or related protest</p>	<p>Article 21 says: “a person who in any public place or at any public meeting wears uniform signifying his association with any political organisation or with the promotion of any political object shall be guilty of an offence”</p> <p>This does not appear to be routinely enforced. If it were, it would have implications for commemorations, colour parties and bandsmen.</p> <p>Level 2 notes the defences available to a person accused of this offence</p>
<b>3.13 Investigation and Enforcement</b>	<p>The PSNI Manual says that consideration should be given to appointing a Senior Investigating Officer (SIO) at an early stage who will be a member of the Gold strategic group but act as a Bronze commander during the event. The investigative bronze will have responsibility for any post event investigations linked to the police operation</p> <p>Legal guidance is given on video or still photographic recording and the publication of images to identify alleged offenders</p> <p>There is special guidance for images of children</p>	<p>The Criminal Justice Strategy will be determined by the District Command Team</p> <p>The Criminal Justice Strategy and associated documents, especially the Event Policy Book, are a significant mechanism of after the event accountability.</p> <p>Wood v Commissioner of Police of the Metropolis [2009] EWCA Civ 414 lists considerations that should be taken into account</p> <p>The NIPB Human Rights Thematic Review: Policing with Children and Young People makes a relevant recommendation which the PSNI accepted</p>

#### 4. After the Event

Issue or stage in process	Law or standard	Accountability mechanism or relevant information
<b>4.1 Monitoring Public Order Policing in General</b>	The Policing Board is the main agency to monitor public order policing in general and takes its role seriously	The annual Human Rights Reports give details about the past year and make recommendations. The Board is a channel for making relevant representations to the PSNI.
<b>4.2 Monitoring Police Use of Force</b>	The Policing Board monitors the use of force carefully, but the Police Ombudsman also has a role	Any incident that involves the use of force by a police officer is recorded in the police officer's notebook and reported to the relevant supervisor. Any such incident may be the subject of a Police Ombudsman investigation regardless of whether or not a complaint has been made.
<b>4.3 Office of the Police Ombudsman for Northern Ireland</b>	The Police Ombudsman's Office provides independent, impartial investigation of complaints about the police in Northern Ireland	The Ombudsman will investigate any discharge of a weapon in any situation and will respond to complaints from members of the public about any alleged misconduct or criminality committed by police officers in public order situations. Personnel from the Office will generally be willing to meet groups of people from the community to explain their role and how to complain.

## How Public Order Policing Works in Northern Ireland – Level 2

### 1. General

#### 1.1 PSNI Code of Ethics

All actions of police officers should be informed by the Code of Ethics which is written and reviewed by the Policing Board. Breach of the Code may be the subject of disciplinary or criminal charges subsequent to investigations carried out by the PSNI or the Police Ombudsman (PONI). The code specifies a duty to preserve order and to act within human rights standards. The general duties of a police officer are:

- a. to protect life and property;
- b. to preserve order;
- c. to prevent the commission of offences; and
- d. where an offence has been committed, to take measures to bring the offender to justice;

When carrying out these duties, police officers shall obey and uphold the law, protect human dignity and uphold the human rights and fundamental freedoms of all persons as enshrined in the Human Rights Act 1998, the European Convention on Human Rights and other relevant international human rights instruments.<sup>14</sup>

The “attestation” (which used to be known as the oath) of a PSNI Officer commits to human rights and equality:

“I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all individuals and their traditions and beliefs; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof according to law.”<sup>15</sup>

Article 4 of the Code of Ethics regulates the use of force including the use of firearms:

Police officers responsible for the planning and control of operations where the use of force is a possibility shall so far as possible plan and control them to minimize recourse to the use of force, in particular, potentially lethal force. Consideration shall be given during the planning of an operation to the need for medical assistance to be available.

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<sup>14</sup> PSNI Code of Ethics (n 1) Article 1.1

<sup>15</sup> Ibid Article 1.3

Article 1.9 of the Code outlines a duty to keep records but also states that these should not be destroyed through lack of care etc. This means that any interference with records by a police officer amounts to at least misconduct if not criminality. This is an important aspect of accountability.

## 1.2 Policing with the Community

The PSNI believe that policing with the community, a concept originating with the Patten Report, is at the centre of the distinctive model of policing which the Service espouses. In 2011 it published a strategy on the subject which stated “engagement, partnership and service delivery are critical to how we improve public safety and deal with crime and disorder through personal policing.”<sup>16</sup> The strategy includes specific accountability mechanisms such as individual performance reviews of officers and staff, satisfaction surveys and monitoring complaints trends.

The policy implies keeping in close contact with community leaders and treating the public as customers rather than “objects” of policing. It also informs the view that, in public order situations, it is as much a priority to keep people safe as to confront and end law breaking.

## 1.3 Principles of Public Order Policing

The PSNI has adopted the guidelines for Authorised Professional Practice for Public Order, developed by a number of police agencies and published by the College of Policing.<sup>17</sup> These are designed to guide public order policing in England, Wales and Northern Ireland. There are six basic principles (below) which cover:

- Policing style and tone – police should be impartial, approachable and identifiable
- Communication – encouraging dialogue, clarity and explanation of actions
- Use of the national decision model (NDM) – an audit trail which records decisions and rationale (see below)
- Command – trained commanders and availability of specialist advice
- Proportionate response – based on relevant human rights principles
- Capacity and capability – sufficient training and resources

The PSNI has also developed its own “PSNI Manual of Policy, Procedure and Guidance on Conflict Management,” which was de-restricted from November 2014.<sup>18</sup> Chapter 13 deals specifically with Public Order and other chapters deal with particular aspects of the use of force.

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<sup>16</sup> PSNI, ‘Policing with the Community Strategy 2020’ <[www.psni.police.uk/pwc - 2020 v2.pdf](http://www.psni.police.uk/pwc - 2020 v2.pdf)> accessed 6th May

<sup>17</sup> APPPO (n 3)

<sup>18</sup> PSNI Manual (n 4)

## 1.4 Right to Freedom of Peaceful Assembly

ECHR Articles 9 (freedom of thought, conscience and religion), 10 (freedom of expression) and 11 (freedom of assembly and association) form the basis of an individual's right to assemble with others for the purposes of protest or other lawful activity. APPPO says:

The right to freedom of peaceful assembly under ECHR Article 11 protects the right to protest in a peaceful way (including static protests, marches, parades and processions, demonstrations and rallies). It does not include participation in violent protests. ECHR Article 11 places both negative and positive duties on the police.

### **Negative duty**

The police must not prevent, hinder or restrict peaceful assembly except to the extent allowed by ECHR Article 11(2). They must not impose unreasonable indirect restrictions on persons exercising their rights to peaceful assembly, e.g. imposing a condition on the location of a protest which effectively negates the purpose of the protest. Pre-emptive measures taken by the police that restrict the exercise of the right to peaceful assembly will be subject to particular scrutiny.

### **Positive duty**

In certain circumstances, the police have a duty to take reasonable steps to protect those who want to exercise their rights peacefully. This applies where there is a threat of disruption or disorder from others. This does not mean that there is an absolute duty to protect those who want to protest, but the police must take reasonable measures in particular circumstances.<sup>19</sup>

Restrictions (see below) on the linked freedoms of belief, expression and peaceful assembly may be imposed provided any such restriction is prescribed by law, in pursuit of one or more legitimate aims specified in paragraph 2 of the Article in question, necessary and proportionate.

## 1.5 The National Decision Model

In public order policing, as in any other operational area, the PSNI should be using the National Decision Model, which is another Authorised Professional Practice. The PSNI Manual Introduction (p.3) explains the use of this model in the following way:

Adopting the NDM is part of a concerted drive to ensure a greater focus on delivering the mission of policing, acting in accordance with our values, enhancing the use of discretion, reducing risk aversion and supporting the appropriate allocation of limited policing resources as the demand for them increases. Understanding and practising the

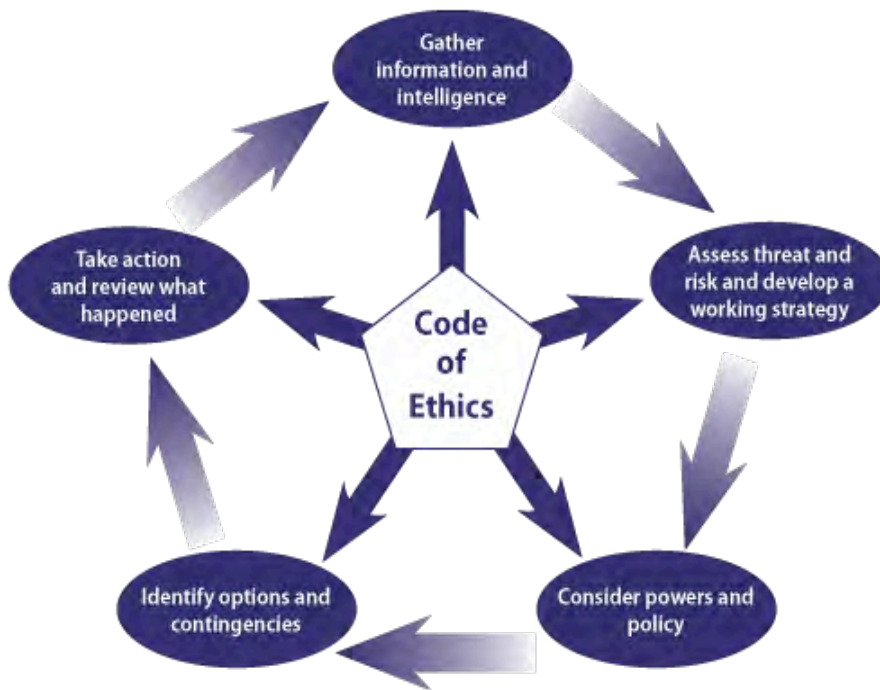
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<sup>19</sup> APPPO – College of Policing (2014) : *Core Principles and Legislation* [Internet] <<https://www.app.college.police.uk/app-content/public-order/core-principles-and-legislation/>> accessed 11<sup>th</sup> May 2015

NDM will help police officers and staff to develop the professional judgement necessary to make effective policing decisions... Decision makers will receive the support of their organisation in all instances where they can demonstrate that their decisions were assessed and managed reasonably in the circumstances existing at the time. This applies even where harm results from their decisions and actions.

There are six key elements to the model:

1. Values – statement of mission and values
2. Information – gather information and intelligence
3. Assessment – assess threat and risk and develop a working strategy
4. Powers and policy – consider powers and policy
5. Options – identify options and contingencies
6. Action and review – take action and review what happened



Note that the code of ethics informs each stage of the decision making model. Significant decisions should be recorded by the appropriate police officers and the record is then available for post-event review.<sup>20</sup> The fact that decisions should be taken in a standard way and recorded can be seen as an important aspect of accountability.

## 1.6 Domestic Legal Framework

The police have statutory powers and duties in relation to the policing of public processions, related protests and open-air public meetings, including those set out in the:

<sup>20</sup> APPPO National Decision Model (n 6) See also PSNI Manual Introduction

- [Public Processions \(Northern Ireland\) Act 1998](#)
- [Public Order \(Northern Ireland\) Order 1987](#)
- [Police and Criminal Evidence \(Northern Ireland\) Order 1989](#)
- parts of the [Criminal Justice and Public Order Act 1994](#) which extend to Northern Ireland
- [Criminal Law Act \(Northern Ireland\) 1967](#)

The police also have common law powers and duties including powers to prevent breaches of the peace.<sup>21</sup>

The PSNI Manual also makes clear that throughout the engagement with a public order event, officers must take account of the Code of Ethics and the Human Rights Act. Specifically:

...in respect of each of the articles of the European Convention on Human Rights (ECHR) set out, consider:

- Whether police actions may interfere with any of the rights protected by the article; and
- What steps will be taken to ensure that any interference is lawful.

Bear in mind that the police are under a positive duty to secure the rights of others. This may include taking appropriate action to prevent unlawful conduct by persons which prevents persons from enjoying their rights.<sup>22</sup>

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<sup>21</sup> APPPO (N 7) Legislative Variations for Northern Ireland

<sup>22</sup> PSNI Manual (N 4) para. 13.14 and 13.15

## 2. Before the Event

### 2.1 Definition of an event

The PSNI Manual defines events in the following way:

A public event includes any event or incident, and can range from routine operational policing through to major disorder, where a degree of planning for such an event is necessary and applicable, and therefore a comprehensive audit trail is required. Examples of such events are:

- **Disorder associated with spontaneous incidents, for example:**

- Community issues.
- Criminal activity.
- Police activity.

- **Single issue protests, for example:**

- Direct action groups.
- Industrial disputes.
- Environmental issues.

- **Lawful public events, for example:**

- Sporting events.
- Concerts.
- Notified public processions.
- Lawful protests.
- Community events.

- **Unlawful public events, for example:**

- Unlicensed music events (i.e. raves).
- Un-notified public processions or un-notified protest meetings.
- Dog fights.<sup>23</sup>

### 2.2 Starting point for policing public protest: the presumption in favour of peaceful assembly

This is an important principle but it is not elaborated on in this section of APPPO. The police actually have a duty to help (facilitate) people to exercise their right to freedom of assembly. However, in Northern Ireland the responsibility to look at public parades and related protests in advance, and to judge whether any restrictions are necessary, has been given to the Parades Commission, though

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<sup>23</sup> Ibid para 13.11

the PSNI retains an important role both in receiving notification and providing factual, evidence based information to the Parades Commission.

## 2.3 Notification of Parades and Related Protests

APPPO says:

Under the [Public Processions \(Northern Ireland\) Act 1998](#), organisers of public processions and related protest meetings are required to provide notice to the PSNI including specified information. ***Failure to provide such notice results in the organisers and participants being in breach of the Act, but does not render the public procession/protest unlawful.***<sup>24</sup> Detailed guidance on this matter is contained in [PSNI Service Procedure 14/2008 \(amended 9/6/11\)](#).

APPPO makes it clear that:

A breach of the notification requirement in [section 6](#) or [section 7](#) of the Public Processions (Northern Ireland) Act 1998 does not render a public procession or related protest meeting unlawful or mean that an otherwise peaceful public procession or related protest meeting falls outside the protection of ECHR Article 11. See APP on the [Human Rights Act 1998](#). The sections only apply to public processions and related protest meetings, not to other assemblies.

It should be noted, however, that a person who organises or takes part in an un-notified procession or associated protest will be guilty of an offence under S. 6(7) or S.7(6) of the Public Processions (Northern Ireland) Act 1998 punishable by 6 months imprisonment or a Scale 5 fine. So while a failure to notify does not render a parade or protest in itself unlawful (and does not thereby provide a reason for its dispersal or to dispense with the protections of the ECHR and the Human Rights Act), those knowingly organising or participating in it are committing offences.

Notification of planned parades or associated protests is to be handed in to the PSNI, who in turn pass it on to the Parades Commission. It is for the Parades Commission to decide on any necessary advance restrictions on the parade or protest and they have their own personnel who may provide relevant information. However, in “sensitive” cases, the PSNI will be asked for a detailed report.

There is no precise definition of “sensitive” but form 11/1 asks two questions which try to ascertain if it is a sensitive case: (1) Will uniform /regalia be worn; and (2) Will banners/flags be carried. Other details noted in the Parades Commission Code of Conduct which try to establish the sensitive nature of the procession include: the areas through which the organisers intend to march, whether the route passes churches or places of worship and if the procession will pass an interface. Appendix B in the Code of Conduct also outlines guidance for processions which may pass in the vicinity of any of these.

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<sup>24</sup> Emphasis added

Police advice on sensitive cases must be provided on Form 11/9, which requires a detailed analysis of the human rights implications (including engagement of competing rights) as well as practical information about the planned parade or protest.<sup>25</sup> Therefore, although the decision is for the Parades Commission, the PSNI must take into account similar considerations in providing its professional advice. The framework for this is expressed in the following way in APPPO:

### **Organisers' Intentions**

Peaceful intentions should be presumed unless there is compelling evidence that those organising or participating in a particular event will themselves use, advocate or incite violence. Peaceful in this context includes conduct that annoys or offends persons opposed to the idea or claims a public procession or assembly is promoting.

The possibility of extremists with violent intentions, who are not members of the organising association, joining the demonstration does not take away the right to peaceful assembly. Even if there is a real risk of a public assembly or procession resulting in disorder by developments outside the control of those organising it, such a procession or assembly does not for this reason alone fall outside the scope of protection guaranteed by ECHR Article 11. See [Human Rights Act 1998](#). Although organisation and participation in a public procession or associated protest that has been prohibited, or action in violation of any conditions imposed upon such an event, would constitute a criminal offence, the event itself is not rendered unlawful.

### **Restricting the right to peaceful protest**

The rights and freedoms provided under the Human Rights Act, Articles 9, 10 and 11 ECHR are qualified rights. This means that they may be interfered with or restricted in certain circumstances if necessary and for a legitimate aim. Restrictions can be imposed on the freedoms of belief, expression and peaceful assembly provided any such restriction is:

- prescribed by law
- in pursuit of one or more legitimate aims specified in paragraph 2 of the Article in question
- necessary and
- proportionate

A restriction on a peaceful protest will not satisfy the requirement that it should be necessary in a democratic society just because the majority are in favour of it. A balance which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position must be achieved.

### **Principle of proportionality**

This principle requires there to be a link between the purpose for the restriction and the measures employed to achieve that purpose.

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<sup>25</sup> PSNI Service Procedure (n 9) See also below

**Considerations**

- is the purpose sufficiently important to justify the restriction (i.e. are there relevant and sufficient reasons to justify the restriction)?
- will the measures proposed achieve that purpose?
- are the measures to be taken the least restrictive to achieve the intended purpose?
- are the restrictions to ECHR rights necessary to meet the legitimate aims set out in the ECHR rights concerned?

If the answer to all four questions is **yes**, then the conditions imposed on a public procession or associated protest under the Public Processions (Northern Ireland) Act 1998 will be proportionate.

Under [section 8](#) of the Public Processions (Northern Ireland) Act 1998, conditions which may be imposed on a public procession include, but are not limited to, conditions on the route of the procession or a prohibition on entering any place.

Under [section 9A](#) of the Act, conditions which may be imposed on a protest meeting include, but are not limited to, conditions on the place where the meeting may be held, its maximum duration or the maximum number of persons who may take part in it.

Form 11/9, which details the format in which PSNI reports to the Parades Commission must be given, includes sections on the history of previous parades or protests which must detail past compliance with the Code of Conduct and any public disorder which has taken place in the past. It prescribes a Community Impact Assessment which requires estimating any impact on relationships within the community as well as disruption to the life of the community. Form 11/9 also includes a section on the use of force compatibly with Articles 2 and 3 of the ECHR. Obviously, this refers to planning for the use of force but similar considerations have to be taken into account when the actual use of force is contemplated (see below). It does this by reference to Article 2 ECHR (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment). It then lists a number of other Articles with a series of detailed questions that the police officer drawing up the report must answer. These are Article 5 (right to liberty), Articles 8 to 11, covering the right to privacy, freedom of religion, freedom of expression and freedom of assembly and Article 14 (prohibition of discrimination). This is basically an exercise in examining the competing rights engaged by the parade or protest, the likely police responses and how in turn they may affect the rights of the different parties involved.

An important element of accountability is that the PSNI have decided that both Form 11/9 and any post-parade report to the Parades Commission (which must be made in respect of a parade or protest that has had restrictions placed upon it or at which there was any disorder) will be shared with “any interested parties.” It notes:

It is imperative that the authors of police reports ensure that they are prepared on the understanding that their contents will be shared with any interested parties.<sup>26</sup>

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<sup>26</sup> Ibid Appendix B 1(5)(d)

There should therefore be no doubt in any particular case how the PSNI has advised the Parades Commission and whether they have done so in strict accordance with the criteria laid down by law and the possibly competing rights detailed in the European Convention on Human Rights.

The APPPO document also lists the legal conditions for the banning of parades:

**Banning a public procession**

[Section 9](#) and [section 11](#) of the Public Processions (Northern Ireland) Act 1998 provide for the secretary of state to review the Parades Commission's determinations and prohibit public processions in certain defined circumstances.

[Article 5](#) of the Public Order (Northern Ireland) Order 1987 provides for the secretary of state to prohibit public assemblies in certain defined circumstances.

(**Note:** PSNI does not have powers to prohibit events. The considerations in that paragraph are for the secretary of state.)

Section 9 of the Public Processions (Northern Ireland) Act 1998 provides for the chief constable to request the secretary of state to review a determination issued in respect of a public procession by the Parades Commission. Section 11 of the Act enables the secretary of state, in specified circumstances, to prohibit the holding of a public procession. Section 11(5)(b) states that, before making any such decision, the secretary of state shall consult the chief constable where practicable.

## 2.4 Static Meetings or Protests

There is no notification requirement in Northern Ireland for a static meeting or protest as long as it is not a protest against a notifiable parade. However, the police do have powers to impose restrictions, subject to the standard human rights test described above. APPPO states:

[Article 4](#) of the Public Order (Northern Ireland) Order 1987 gives the police the power to impose directions on persons organising or taking part in an open-air public meeting such conditions as to the place at which the meeting may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent disorder, damage, disruption or intimidation. It is a precondition for the exercise of this power that a senior police officer reasonably believes (a) that the meeting may result in serious public disorder, serious damage to property or serious disruption to the life of the community; or (b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do.

## 2.5 Communication

Communication with the media, the crowd, organisers, residents and other stakeholders are seen as crucial to successful public order policing. The APPPO document puts the desirability of early communication with such people in the context of the police response to protest. It says:

Protest in the context of public order policing is the public demonstration by one or more persons of their opposition to, or support for, a cause. The cause and nature of the protest can range significantly in size, type and complexity.

As a lawful activity, peaceful protest does not usually require police attendance or concern. Many protest events take place without any adverse impact on the wider community. Others are dealt with by organisers and self-stewarding to minimise adverse impact. However, there may be occasions when it is anticipated that some disorder or breach of law may occur, or there may be an imminent danger caused to a section of the community, which requires a police intervention. It is the responsibility of the relevant police force to determine whether there is a need for police presence at a protest event.

When planning the police response to a protest event, the starting point should be to facilitate peaceful protest by providing a lawful and proportionate policing response, balancing the needs and rights of protesters with those affected by the protest. Commanders should also have prepared appropriate contingency plans.<sup>27</sup>

The police may use community mediators and their own liaison teams to facilitate communication. In principle, the view is that:

Effective communication between protest organisers, participants and the police is vital to facilitating peaceful protest. Where practicable, the police should also proactively engage with protest subject(s), local businesses and/or residents who may find their daily routines disturbed by the protest event. Communication prior to, during and after the protest event will assist in managing the expectations of all stakeholders involved in and/or affected by the event.

The extent and quality of communication between the police and protest organisers and any other stakeholders is clearly a key feature of public order policing and a matter on which the police can be held to account.

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<sup>27</sup> APPPO Communication (N 10)

## 2.6 Planning

Subject to the overall authority of the Chief Constable, responsibility for public order policy in the PSNI rests with the Assistant Chief Constable (ACC) Operational Support Department (OSD). The planning for a particular public order event should correspond to the Command hierarchy, comprising Gold, Silver and Bronze commanders, and relates to plans at strategic, tactical and operational levels.

APPPO says:

The Gold Strategy outlines the overall intention of the policing operation, including the [potential outcome](#)(s) sought. In doing this, it should establish a set of objectives relevant to the current knowledge of the situation and the analysis of the threats and risk presented.

The Tactical Plan<sup>28</sup> (responsibility of Silver commander) should provide a clear description of the chosen [tactical options](#) across a range of operational contexts, and identify any contingencies.<sup>29</sup>

In accordance with the tactical plan, and if practicable, the [bronze \(operational\) commander](#) may be required to develop deployment plan(s) relevant to their area of command (functional or geographic). A deployment plan is likely to be primarily focused on the detailed deployment of resources and contingencies.<sup>30</sup>

The planning for an event which is either notified or otherwise known to the police in advance begins with one or more meetings of a Strategy Group, comprising the Gold and Silver Commanders and any specialist commanders likely to be involved. The PSNI Manual says:

At the first Strategy Meeting an 'Event Policy Book' should be opened. This Policy Book remains 'live' throughout the entire process, i.e. it will document everything from the strategic decisions and considerations, the planning process, briefings and through to the eventual de-briefing of the operation. The Event Policy Book will be a constituent part of the 'Event File'... In the event of any judicial inquiry (or Police Ombudsman for Northern Ireland (PONI) investigation) the Event File, and any associated documentation, will be disclosable and/or supplied to PONI.<sup>31</sup>

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<sup>28</sup> Described as "Operational Orders" in the PSNI Manual

<sup>29</sup> APPPO College of Policing (2014) : *Command* [Internet] <<http://www.app.college.police.uk/app-content/public-order/command/#gold-strategy>> accessed 6<sup>th</sup> May 2015

<sup>30</sup> APPPO - College of Policing (2013) : *Deployment planning* [Internet] <<http://www.app.college.police.uk/app-content/operations/operational-planning/deployment-planning/>> accessed 6<sup>th</sup> May 2015

<sup>31</sup> PSNI Manual (N 4) Para. 13.29

The PSNI Manual goes on to describe the purpose of the Strategy Meeting:

The Strategy Meeting may identify a number of strategic options. The Silver Commander will be responsible for overseeing the planning process and ultimately the production of the Operational Order. If it is necessary to delay a final decision on the strategy to be employed, plans for each option should be prepared as annexes to the Operational Order. When the final decision is made as to the actual strategy to be employed, the relevant annex can be attached to the Operational Order and officers can then be briefed accordingly. In all cases, a full audit trail of the various options should be made and then the decision, and reasons, why the final option was chosen.<sup>32</sup>

Police strategists should take account of any “tension indicators” which will then form part of a Community Impact Assessment.

In the course of gathering information for the planning process, police should be in a position to collate and detail any tension indicators within the community. Tension indicators are manifestations of public unease and may include a rise in sectarian assaults, slogans/graffiti, flags, criminal damage, petrol bombings, intimidation, public disorder at interfaces etc.<sup>33</sup>

It is unlikely that the plans of the PSNI for any public order event would be made public. However, it is a significant accountability measure that they would be disclosable in any legal proceedings and will be available for inspection by regulatory bodies.

Where relevant a Senior Investigating Officer (SIO) should be appointed for the event. S/he will attend the Gold Commander’s Strategy Meetings and will be responsible for developing the Criminal Justice Strategy for the event. This role is further described in the Investigation and Enforcement section below.

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<sup>32</sup> Ibid Para. 13.32

<sup>33</sup> Ibid Para. 13.33

### 3. On the Day

#### 3.1 Command

The command on the day is based on the Gold, Silver, Bronze hierarchy (see diagram below) with a potentially important operational role for the Tactical Support Groups (TSGs) and/or Police Support Units (PSUs – see below). Their key responsibilities are:<sup>34</sup>

##### Gold Commander

- is responsible and accountable for the policing of the operation/event
- determines the strategic objectives
- retains strategic oversight and overall command responsibility throughout the operation
- sets the tactical parameters of the operation but does not manage tactical decision making – this is the silver commander’s responsibility

##### Silver Commander

- establish a command structure that is appropriate to the circumstances, and sufficiently resilient and robust to achieve the strategy
- provide the pivotal command chain link between bronze commanders and the gold commander
- assess the available information and intelligence to properly evaluate the threat, vulnerabilities and risk
- remain suitably located in order to maintain effective tactical command of the incident or operation
- ensure that all decisions are documented in the command log in order to provide a clear audit trail

##### Bronze Commander

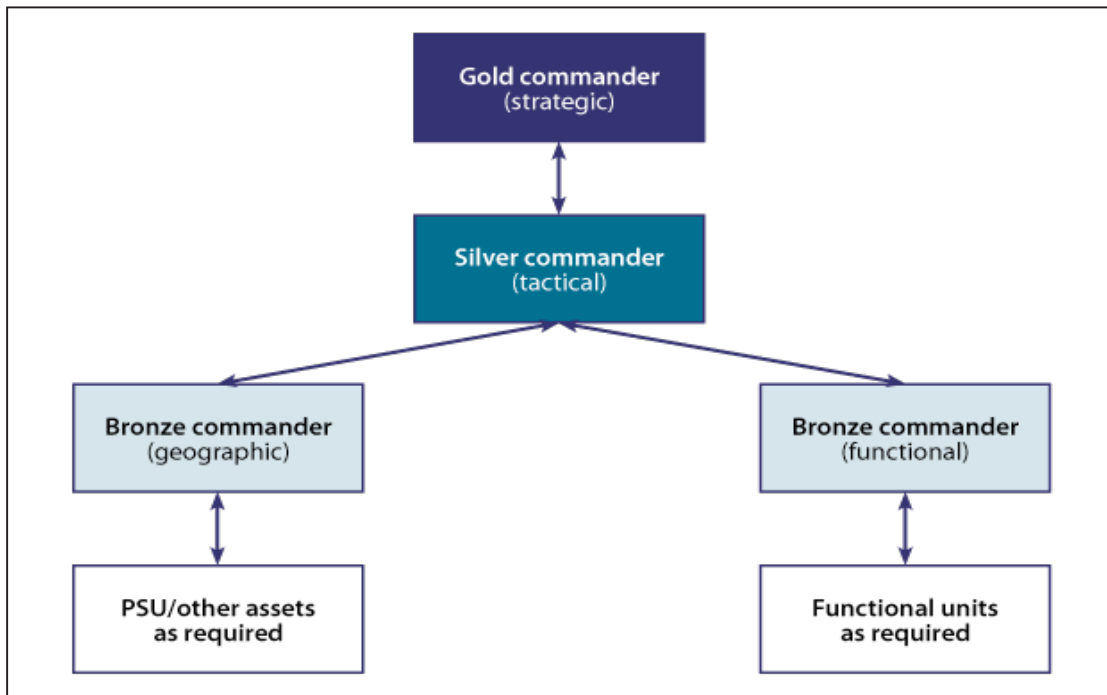
- possess clear understanding of the [gold commander’s](#) strategy, the [silver commander’s tactical plan](#) and their own role within it
- implement the relevant part of the silver commander’s plan by using appropriate tactics within their geographical/functional area of responsibility
- develop a deployment plan relevant to the geographical or functional role
- make decisions within their agreed level of responsibility, which includes seeking approval for any variation in agreed tactics

##### PSU Commander

The PSU commander needs to be trained to the national standard and is responsible for the leadership, deployment and control of one [police support unit](#) (PSU) working under a bronze commander or [sub bronze commander](#), in accordance with [public order deployment planning](#). The PSU commander also needs to work effectively with other PSU commanders

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<sup>34</sup> APPPO Command (n 30)



and/or specialist resources. This may be achieved by communicating with other PSU commanders and coordinating deployments in line with the overall plan.

### 3.2 Units Potentially Involved

A range of police officers, including community officers and those with specialist functions, may be involved in public order situations. However, when disorder threatens, those on the “front line” are likely to be members of the Tactical Support Groups (TSGs) or Police Support Units (PSUs).

A Criminal Justice Inspection Report<sup>35</sup> describes these units as follows:

For the PSNI, in addition to a cadre of specially trained officers in TSGs (part of the Operational Support Department OSD), the main resilience for public order is provided by district policing officers who are formed into PSUs, thus bolstering flexibility and capacity. More recently as we have observed, further resilience has been added from other areas, including some from the OSD and from the Crime Operations Department. In terms of capability all these officers are trained to exactly the same standards as their colleagues in TSGs. What sets the TSG officers apart is simply the day and daily close working of officers attached to it - providing a consistency of approach.<sup>36</sup>

<sup>35</sup> Criminal Justice Inspection, ‘A review of the criminal justice system’s preparedness for exceptional or prolonged public disorder’, (Belfast, June 2013) CIJINI <<http://www.cjini.org/CJINI/files/ad/adcafadf-19d8-47aa-b6fb-829ad154272f.pdf>> accessed 6th May 2015

<sup>36</sup> Ibid Para 2.37. The TSGs do however receive a greater regularity and depth of training which covers more detailed scenarios.

There are currently 13 TSGs, comprising approximately 400 officers. The rest of the approximately 1,400 suitably trained officers (out of 7,000 PSNI total) are part-time members of PSUs. A PSNI PSU comprises: 1 inspector, 4 sergeants, 20 constables and 4 or 5 ballistically-protected vehicles.<sup>37</sup>

### 3.3 Communication

Communication is a vital part of public order policing. The police will develop plans for communicating with the media (not dealt with here) and with the wider public. The APPPO says:

During the preparation for certain operations, and in particular the policing of events that may cause disruption to communities, the police should develop a plan for reaching and effectively communicating with the wider public. The plan should not act as a replacement for routine community engagement plans. The aim of the police communication should be to maximise public confidence, provide the public with sufficient information to minimise disruption, and give the police perspective on the event/incident.<sup>38</sup>

The advances in web and social media technologies enable perceptions, views and ideas to be quickly disseminated to a mass audience. Police commanders should consider using these technologies to:

- assess the emerging views and intentions of individuals/groups as part of a developing information/intelligence picture
- disseminate key messages and challenge misinformation

The police may use community mediators and/or police liaison teams as a method of communicating with relevant people, including the “crowd” on the day. APPPO says:

[Community mediators](#) are individuals or groups, independent from the police (eg, religious leaders, community advocates, voluntary sector agencies), who represent and regularly engage with a specific community. They are a useful contact for the police in that they are able to assist in dispelling rumour, reducing conflict and facilitating the flow of information to and from the community.

Face-to-face communication between the police and the public is a key element of the [model of policing](#), and all officers on operational deployment should be encouraged to engage directly with the public where practicable.

Public order policing focuses on the management of crowds and as such it is important that police commanders, planners and advisers have an understanding of the impact police operations can have on crowd behaviour.

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<sup>37</sup> APPPO Tactical Options (n 12)

<sup>38</sup> APPPO Communication (n 10)

The police should also consider [developing a crowd engagement plan](#) which aims to positively encourage the crowd's propensity towards self-regulating behaviour. The plan may be delivered by the police or by independent communication methods/channels. See also [communicating with crowds](#). The deployment of [police liaison teams](#) (PLTs) should be considered when developing the crowd engagement plan. PLTs work before, during and after events to establish dialogue with groups, while adopting a 'community policing' style.

People participating in a protest who wish to communicate their views on the policing of the event or wish to know the orders or intentions of the police should use any of the channels mentioned but should probably regard one of the Bronze commanders as an authoritative source.

### 3.4 The Disorder Model

The Disorder Model is a way of conceptualising levels of disturbance to public order. APPPO describes it and its implications in the following way:

#### **State of normality**

The day-to-day state of order and policing services provided within a community. This can vary widely from one area to another and even by time of day. Effective information and intelligence management provides accurate information as to the current state. It should be recognised that communities are complex in nature and may be permanent or transient.

#### **Tension**

This manifests as a level of increased concern or feelings within a community, group or crowd. A trigger incident may result in movement from a state of heightening tension to disorder. Such incidents can be caused by the police, the community or a third party.

#### **Disorder**

This represents the stage at which mood is supplemented by action, whether isolated or sustained. It manifests itself in disruption, damage or violence. Such disorder may occur following a single trigger incident or a series of incidents that have a cumulative effect. At this level, unchecked or uncontrolled activity (including ineffective or incorrect police response) may deteriorate into serious disorder.

#### **Serious disorder/riot**

An escalation into widespread violent behaviour. This may take the form of violent protest, rioting, criminal damage, looting, and may include the use of weapons.

#### **Unrest**

This is the period, sometimes prolonged, when the rebuilding of relationships takes place. Sensitivity and trust are key factors in this process. Police and partners should focus on a structured return to a state of normality, and should be aware that it is possible to cause a return to disorder/serious disorder through excessive or inappropriate action.

Progression through all stages is not necessary. Dependent on the circumstances, it may be possible to return to the state of normality from any level. The stages from state of normality through to serious disorder/riot can be viewed in terms of an escalation in tension and conflict. A return to the state of normality from any stage can be viewed as a de-escalation.

### 3.5 The Use of Force – Law and General Principles

The Criminal Law Act (Northern Ireland) 1967, the Police and Criminal Evidence (Northern Ireland) Order 1989 and the Criminal Justice and Immigration Act 2008 and the rights and freedoms contained within the [ECHR](#) govern the police use of force. Article 4 (Use of Force) of the Code of Ethics must also be taken into account. APPPO says:

The requirement that domestic law and ECHR Articles 2, 3 and 8 impose is that, if possible, non-violent means should be used to resolve an incident before force is used.

Torture, inhuman and/or degrading treatment or punishment are all prohibited absolutely by ECHR Article 3, irrespective of the circumstances (including the need to combat terrorism) and the victim's behaviour.

Recourse to physical force against a person which has not been made necessary by his or her own conduct is in principle an infringement of ECHR Article 3.

ECHR Article 8 protects, among other things, the right to physical integrity and is capable of protecting individuals against forms of ill-treatment which do not reach the high threshold of ECHR Article 3.

#### Core Questions

- would the use of force have a lawful objective (eg, the prevention of injury to others or damage to property, or the effecting of a lawful arrest) and, if so, how immediate and grave is the threat posed?
- are there any means, short of the use of force, capable of attaining the lawful objective identified?
- having regard to the nature and gravity of the threat, and the potential for adverse consequences to arise from the use of force (including the risk of escalation and the exposure of others to harm) what is the minimum level of force required to attain the objective identified, and would the use of that level of force be proportionate or excessive?

It is essential that these core questions are considered in line with [ten key principles](#) governing the use of force by the police service. See also the [briefing template](#) which provides an overview and reminder to officers on the use of force.

## Domestic Law

In Northern Ireland [section 3](#) of the Criminal Law Act (Northern Ireland) 1967 and [Article 88](#) of the Police and Criminal Evidence (Northern Ireland) Order 1989 and common law apply to all uses of force by the police and require that any use of force should be 'reasonable' in the circumstances. Reasonable in these circumstances means:

- absolutely necessary for a purpose permitted by law
- the amount of force used must also be reasonable and proportionate (ie, the degree of force used must be the minimum required in the circumstances to achieve the lawful objective) otherwise, it is likely that the use of force will be excessive and unlawful

Excessive use of force is unlawful.

### 3.6 Use of Force – European Court of Human Rights

*Case Reference: McCann and Others v United Kingdom (1995) 21 EHRR 97*

A distinction has been made between the use of force which is intended to be lethal, or as a result of which death occurs, and other uses of force. [Article 2](#) will be invoked whenever death occurs at the hands of the state (or serious injury in a situation where death could have occurred) irrespective of the police contact or type of force or weapon used.

The European Court has held that this will apply to the use of force which:

- is intended to result in the death of a person and which has that effect
- results in the death of a person and which could have been reasonably foreseen to have that consequence
- results in serious injury to a person, where death could have occurred

In any of the above situations, force can only be used where it is no more than absolutely necessary. Any use of force must be reasonable in the circumstances. This means that:

- the use of force must be absolutely necessary for a purpose permitted by law, such as self-defence, defence of another, to prevent crime, or to effect a lawful arrest – force should be the last resort
- the amount of force used must also be reasonable and proportionate and the degree of force used must be the minimum required in the circumstances to achieve the lawful objective, otherwise, it is likely that the use of force will be excessive and unlawful<sup>39</sup>

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<sup>39</sup> APPPO College of Policing (2013) : *Police use of force* [Internet]. <<https://www.app.college.police.uk/app-content/public-order/core-principles-and-legislation/police-use-of-force/>> [Accessed 06 May 2015] amended to put Northern Ireland references in the main text

### 3.7 Use of Force – PSNI Practice and Guidance on Specific Tactics

The following are summaries of policy on the use of various weapons or methods by the PSNI:

#### **CS 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 (MIBK).

Whilst CS Spray is not intended for use in large-scale incidents of public disorder, its use may be appropriate against:

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

Police officers shall identify themselves as such, and shall give a clear warning of their intent to use CS, unless to do so would compromise the safety of any person, or a warning would be clearly inappropriate or pointless in the circumstances of the incident. The wording for such a warning should be – “I am a police officer. If you do not comply with my instructions I will use CS Spray.” The officer using the spray must complete an electronic Use of Force Monitoring Form.<sup>40</sup>

#### **Attenuating Energy Projectile or Impact Rounds (AEP)**

The AEP has not been designed for use as a crowd control technology but has been designed for use as a less lethal option in situations where officers are faced with individual aggressors whether such aggressors are acting on their own or as part of a group.

The AEP may be deployed in a variety of operational situations; however the objective will remain the same. The AEP is intended for use as an accurate and discriminating projectile, designed to be fired at individual aggressors. The issue, deployment and use of AEP in a public order situation will be subject to authority levels and command measures of the highest integrity.

AEPs must only be used in public order situations:

- Where other methods of policing to restore or sustain public order have been tried and failed, or must from the nature of the circumstances be unlikely to succeed if tried; and
- Where their use is judged to be absolutely necessary to reduce a serious risk of:
  - Loss of life or serious injury; or
  - 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.

Except where urgent action is necessary – i.e. where there is an immediate risk to life, AEPs will only be used following authorisation from the Silver Commander.

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<sup>40</sup> PSNI Manual (N 4) excerpts from Chapter 4

Where rounds are fired the facts will be promptly reported via the Electronic Use of Force monitoring system. District Commanders will make an immediate report to the Policing Board for Northern Ireland providing the detailed circumstances and reasons why it was necessary to discharge the weapon system. All incidents where AEPs have been discharged by police must be reported to the on-call Senior Investigating Officer (SIO) from the Office of the Police Ombudsman immediately using the emergency call-out procedure.<sup>41</sup>

### **Batons**

The decision to draw and/or deploy batons as a group tactic rests with the PSU commander in line with the bronze's deployment plan. In the absence of the PSU commander the decision rests with the supervisor of the unit, having conducted a dynamic risk assessment of the threats faced. Any decision to draw batons and deploy them as a group tactic must be recorded and justified by the decision maker. An individual officer still has the right to draw and use their baton in order to protect themselves, colleagues or members of the public and the decision to strike is for the individual officer and must be justified by them in each instance.<sup>42</sup>

Police officers must report any use of a baton to their immediate supervisors as soon as practicable, submit an electronic use of force form and make the baton available for inspection. In addition, in circumstances where a baton was drawn but not used, the officer must submit a report where it is reasonable to expect that a person (or persons) have anticipated a threat of force being used against them.<sup>43</sup>

### **Dogs**

It is essential that capabilities and limitations of this option are fully understood prior to its use. Advice should be sought from the senior dog officer present. There should be specific risk assessments and appropriate control measures. Warning messages should be given and recorded of impending use and consideration given to community impact and perception.<sup>44</sup>

Most police dogs are now attached to Tactical Support Groups (TSGs). They are considered as an option in a variety of scenarios including public disorder. Use of force, however, accounts for only a very small proportion of the work that police dogs are used for.<sup>45</sup>

### **Water Cannon**

These should only be used when conventional policing methods have been tried and failed or because of the circumstances are unlikely to succeed if tried. They should only be used in

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<sup>41</sup> Ibid excerpts from Chapter 14

<sup>42</sup> APPPO Tactical Options (n 12)

<sup>43</sup> Northern Ireland Policing Board, 'Human Rights Annual Report 2012: Monitoring the Compliance of the Police Service of Northern Ireland with the Human Rights Act 1998', (2012) 86  
<[http://www.nipolicingboard.org.uk/human\\_rights\\_annual\\_report\\_online\\_version.pdf](http://www.nipolicingboard.org.uk/human_rights_annual_report_online_version.pdf)> accessed 6th May

<sup>44</sup> Adapted from APPPO Tactical Options (n 12)

<sup>45</sup> Policing Board (n 44) 87

situations of serious public disorder where there is the potential for loss of life, serious injury or widespread destruction and where their use is likely to reduce that risk.<sup>46</sup>

### 3.8 Freedom of Expression

The APPPO starts with an analysis of the ECHR position and then discusses when and how restrictions on the freedom of expression are justified:

#### **The rights to freedom of belief and expression**

The right to freedom of thought, conscience and religion under ECHR Article 9 and freedom of expression under Article 10 include the freedom to manifest one's religion or beliefs and to hold opinions and to receive and impart information and ideas.

Freedom of expression applies not only to information, ideas or opinions that are popular or favourable or regarded as inoffensive or a matter of indifference, but also to those that offend, shock or disturb.

The manner, as well as the content of expression, is protected under ECHR Article 10. Words, pictures, electronic transmissions, video and conduct intended to convey ideas or information, such as wearing particular clothes, are all protected.

Lawful restrictions may be imposed on the rights to freedom of belief and expression. Restrictions on racist opinions or ideas can be lawful. Statements which incite violence and hate speech are not protected by ECHR Articles 9 or 10.

#### **Restricting the right to freedom of expression**

**Case reference:** *Wingrove v UK* (1997) 24 EHRR 1

ECHR Article 10 is a qualified right. This means that lawful restrictions may be imposed on the exercise of the right to freedom of expression, provided any such restriction:

- is imposed in accordance with the law
- has one or more legitimate aims such as public safety, the prevention of disorder or crime or the protection of the rights of others and
- is necessary and proportionate.

There is little scope under ECHR Article 10(2) for restrictions on political speech or on debate of questions of public interest.

There may be occasions when persons overstep their rights to freedom of belief and expression and, through the public expression or publication of their views, opinions or beliefs, commit criminal offences (see below).<sup>47</sup>

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<sup>46</sup> Adapted from APPPO Tactical Options (n 12)

### 3.9 Protest Activity in Public Thoroughfares

Chapter 13 (Public Order) of the PSNI Conflict Management Manual has a section on “procedures and guidance on protest activity in public thoroughfares.” The section goes some way to providing more certainty as to what activity will be regarded unlawful and is introduced in the following way:

The purpose of these procedures is to provide a consistent and corporate approach to policing protest activity that involves the obstruction of public thoroughfares. Protest action by way of obstructing public thoroughfares, including roads, has increased in recent years. These protests are often associated with the parades issue. However, other single interest groups also use this method of protest.

Protest activity in a democratic society is a legitimate means of expressing views and opinions. Protestors have a fundamental right to peaceful assembly and to demonstrate without fear of physical violence from those who oppose their ideas. Article 10 of the ECHR imposes an obligation on public authorities, including the police, to take positive action to facilitate free assembly and protest. In many cases, this will involve ensuring that the determination of the parades commission is complied with.<sup>48</sup>

It is clear that there cannot be complete consistency of approach as every situation must be approached on its merits and ignoring specific circumstances would in itself be unlawful under the ECHR. The PSNI Manual puts it this way:

Police officers need to make a judgement when confronted by street protestors. There is a balancing of rights required with protestors on the one hand and citizens wishing to go about their daily business on the other. In *MG –v– Germany*, for instance, protestors at a military base blocked the road for 12 minutes in every hour. It was held that the arrests and convictions of the protestors were justified because the blocking of the road caused more obstruction than would normally arise from the exercise of the right to peaceful assembly. Some obstruction is therefore legitimate if considered reasonable in the circumstances. However, each incident should be considered individually and if appropriate, police officers should respond promptly to clear obstructions on main arterial routes, obstructions in the vicinity of airports, ports, hospitals, sectarian interfaces and other key locations.<sup>49</sup>

The PSNI Manual suggests that attending police work with the protest organisers:

Where practicable and appropriate, the Bronze Commander (or senior officer present) should identify the organiser(s) and request that the protest ceases to obstruct the

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<sup>47</sup> APPPO - College of Policing (2014): Core Principles and Legislation <<http://www.app.college.police.uk/app-content/public-order/core-principles-and-legislation/#the-rights-to-freedom-of-belief-and-expression>> accessed 6th May

<sup>48</sup> PSNI Manual (n 4) Chapter 13 Paras 13.81 and 13.82

<sup>49</sup> Ibid Chapter 13 Para 13.86

thoroughfare. Organiser(s) should be advised that the activity might lead to persons being prosecuted for offences committed.

Unless public safety issues prevail, police should facilitate the protestors for a reasonable period of time. Consideration should be given to working in partnership with the organisers to facilitate the protest within agreed parameters of duration, timing and extent. It may be appropriate to restrict the protest to the footpath or a part of the road to enable the continued movement of traffic and pedestrians not involved in the protest.<sup>50</sup>

If there is non-compliance force may then be used to move protestors and arrests might be made.

The legal powers available to police in these circumstances are listed in the PSNI Manual:

The legal basis for police action in relation to obstructive protest activity on roads and other public thoroughfares includes, but is not restricted to, the following:

- Obstructive Sitting, etc, in Public Place, Article 20(1) Public Order (Northern Ireland) Order 1987:

“A person who, by sitting, standing, kneeling, lying down or otherwise conducting himself in a public place, wilfully obstructs or seeks to obstruct traffic or wilfully hinders, or seeks to hinder, any lawful activity shall be guilty of an offence.”

“A constable may arrest without warrant anyone he/she reasonably suspects is committing or has committed an offence under Article 20.”

- Breaking Up Public Procession, Section 14(1) Public Processions (Northern Ireland) Act 1998:

“A person who for the purpose of preventing or hindering any lawful procession or of annoying persons taking part in or endeavouring to take part in any such procession: hinders, molests, or obstructs those persons or any of them; acts in a disorderly way towards those persons; or behaves offensively and abusively towards those persons or any of them, shall be guilty of an offence.”

A constable in uniform may arrest without warrant anyone he/she reasonably suspects is committing an offence under this Act.

- Causing Danger to Road Users, Article 33 Road Traffic (Northern Ireland) Order 1995:

“A person is guilty of an offence if he intentionally and without lawful authority or reasonable cause:

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<sup>50</sup> Ibid Paras 13.93 and 13.94

causes anything to be on or over a road; or interferes with a motor vehicle, trailer or cycle; or interferes (directly or indirectly) with traffic equipment, in such circumstances that it would be obvious to a reasonable person that to do so would be dangerous.”

Article 26 Police and Criminal Evidence (NI) Order 1989 provides the power of arrest for the offences listed above.

Other offences such as Disorderly Behaviour and Provocative Conduct [Articles 18 and 19 Public Order (Northern Ireland) Order 1987] and Obstructing the Highway [Article 88 The Roads (Northern Ireland) Order 1993] may also be relevant.<sup>51</sup>

Breach of the peace is a common law offence and the APPPO Guidelines describe its use in the following terms:

**Breach of the peace**

This is committed when an individual causes harm, or appears likely to cause harm, to a person, or in that person’s presence, to his/her property, or puts that person in fear of such harm being done through an assault, affray, a riot, unlawful assembly or other disturbance. The basic principle is that a police officer may take reasonable action including arrest to stop a breach of the peace which is occurring, or to prevent one which the police officer reasonably anticipates will occur imminently. Reasonable action may also be taken where a breach of the peace has been committed and it is reasonably believed a recurrence of the breach is threatened.

Police action should target the persons responsible for the breach of the peace – action taken which is not directed at the person committing the breach will generally be unlawful. Action cannot be taken against individuals on the basis that they are acting in a manner the likely consequence of which would be to provoke violence in others, if their conduct is reasonable or the actual or potential violence provoked in others is ‘wholly unreasonable’. The guiding principle is that lawful conduct will rarely, if ever, be other than reasonable; and conversely, a violent reaction to the lawful conduct of others will rarely, if ever, be other than wholly unreasonable.

Where – and only where – there is a reasonable belief that there are no other means whatsoever to prevent a breach of the peace, the lawful exercise by innocent third parties of their rights may be restricted by the police. This is a test of necessity, which can only be justified in truly extreme and exceptional circumstances. Before the police can take any steps which restrict in any way the lawful exercise of rights by innocent third parties, they must take all other possible steps (including making proper and advance preparations) to ensure that the breach, or imminent breach, is prevented and the rights of third parties are protected.<sup>52</sup>

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<sup>51</sup> Ibid Paras 13.108 – 13.110

<sup>52</sup> APPPO Core Principles and Legislation (n 20)

However, the PSNI Manual appears to suggest care in the use of breach of the peace as it may not always be compatible with the ECHR:

Officers are required to balance between the various rights and freedoms contained within the ECHR and the need to prevent disorder. In the case of *Steel and others –v- UK* it was found that there had been a breach of Article 10 ECHR when police arrested the persons for breach of the peace. The applicants had been picketing an arms fair in London using banners and leaflets. The police action was deemed to have been a disproportionate response to the fear of disorder. Officers are reminded, therefore, that it is important to recall the test of ‘necessity’ under the Convention. This test, which is applicable to any decision to arrest or exercise powers in respect of protest activity, implies a pressing social need, including ‘clear and present danger’. Only when these criteria have been met, will arrests for Breach of the Peace comply with ECHR.<sup>53</sup>

### 3.10 Incitement and Hate Expression

The Northern Ireland law on these matters is referenced in the APPPO:

#### **Offences of intentional harassment, alarm or distress (ss 4A and 5 of the Public Order Act)**

Applicable offences are those of:

- provocative conduct ([Article 19\(1\)](#) of the Public Order (Northern Ireland) Order 1987)
- threatening, abusive or insulting behaviour ([Article 9\(1\)](#) of the Public Order (Northern Ireland) Order 1987)
- hindering participants in a public procession ([section 14](#) of the Public Processions Northern Ireland Act 1998).

ECHR Article 10(1) protects in substance and form a right to freedom of expression which others may find insulting or offensive. Individuals taking part in a peaceful protest will only come within the terms of the above offences where their conduct moves into the realms of provocative, threatening or other behaviour as set out in respect of each offence.

#### **Incitement to hatred**

A person who uses threatening abusive insulting words/behaviour or displays any written material which is threatening, abusive or insulting is guilty of an offence if ‘(a) he intends to stir up hatred/arouse fear or, (b) having regard to all the circumstances, hatred is likely to be stirred up or fear is likely to be stirred up/aroused’. See [Article 8](#) and [Article 9\(1\)](#) of the Public Order (Northern Ireland) Order 1987.

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<sup>53</sup> PSNI Manual (n 4) Chapter 13 para 13.111

Article 8 provides that the “hatred” or “fear” must apply to: “a group of persons defined by reference to religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins.”<sup>54</sup>

Sectarian hate expression is therefore explicitly outlawed under the category of religious belief and implicitly under race and nationality. We should note that from February 2014 the word “insulting” is removed from the equivalent English legislation to bring it closer to the jurisprudence of the European Court of Human Rights (ECtHR) which protects expression which “offends, shocks or disturbs.”<sup>55</sup> We are not aware of any plans to amend Northern Ireland legislation.

### 3.11 Supporting or glorifying terrorism

APPPO says:

[Section 1](#) of the Terrorism Act 2006 makes it an offence to publish, or cause another to publish, a statement intending members of the public to be directly or indirectly encouraged to commit, prepare or instigate acts of terrorism, or being reckless as to whether such a result will occur.

The offence applies to statements which are likely to be understood by some or all of the members of the public to whom they are published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences (Schedule 1 of the Act lists Convention offences). This includes every statement which glorifies the commission or preparation of such acts or offences;<sup>56</sup> and from which it could reasonably be inferred that it is being glorified as something that should be emulated by members of the public.

### 3.12 Other Public Order Offences

Part IV of the Public Order (Northern Ireland) Order 1987 lists a number of miscellaneous public order offences.

Amongst those, wearing of “political” uniforms is criminalised by Article 21 of the Public Order (Northern Ireland) Order 1987:

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<sup>54</sup> APPPO Core Principles and Legislation (n 20) <<http://www.app.college.police.uk/app-content/public-order/core-principles-and-legislation/legislative-variations-for-northern-ireland/#incitement-to-hatred>> However, Article 19 of the same Order criminalises such behaviour which has the intent or is likely to cause a breach of the peace.

<sup>55</sup> College of policing, ‘Guidance on the Amendment to Sections 5(1) and 6(4) of the Public Order Act 1986’, (December 2013) <<http://library.college.police.uk/docs/APPREF/Guidance-amendment-public-order-2013.pdf>> accessed 6th May 2015

<sup>56</sup> Terrorism Act 2006 s.1 (3)(a) - “whether in the past, in the future or generally” – this aspect may have particular significance in Northern Ireland.

**Wearing of uniform in public place or at public meeting**

21. (1) Subject to paragraph (2), a person who in any public place or at any public meeting wears uniform signifying his association with any political organisation or with the promotion of any political object shall be guilty of an offence.

This does not appear to be routinely enforced. If it were, it would have implications for commemorations, colour parties and bandsmen.

Article 23B gives a senior police officer the power to make a geographical authorisation, lasting for 24 hours, for the use of “no suspicion” stop and search powers if he reasonably believes that serious violence may occur in a locality or that people are carrying dangerous instruments or offensive weapons.

As noted earlier, the Public Processions (Northern Ireland) Act 1998 includes the following offences:

A person who organises or takes part in a public procession/protest meeting—  
(a) in respect of which the requirements of this section as to notice have not been satisfied;  
or  
(b) which is held on a date, at a time or along a route which differs from the date, time or route specified in relation to it in the notice given under this section,  
shall be guilty of an offence.<sup>57</sup>

A general defence is provided for “the accused to prove that he did not know of, and neither suspected nor had reason to suspect, the failure to satisfy the requirements of this section or (as the case may be) the difference of date, time or route.”<sup>58</sup> To the extent that an alleged offence turns on a difference of date, time, route or place it is also a defence for the accused to prove that the difference arose from matters beyond his control, compliance with Parades Commission conditions or something done with the agreement of a police officer of the rank of Inspector or above.

### 3.13 Investigation and Enforcement

The PSNI Manual says:

For any policing operation, consideration should be given to the appointment of a Senior Investigating Officer (SIO) at an early stage in the planning process. The SIO may be a member of the Gold Commander’s strategic group for planning purposes, but during the event, the SIO should report to the Silver Commander as a Functional Crime Bronze with responsibility for the management and investigation of crime. The SIO is responsible for ensuring that all crime investigation policy decisions are recorded throughout the event, to ensure that an audit trail exists. Such decisions will be recorded in the Event Policy Book.<sup>59</sup>

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<sup>57</sup> Sections 6(7) (processions) and 7(6) (protest meetings)

<sup>58</sup> Sections 6(8) and 7(7)

<sup>59</sup> PSNI Manual (n 4) Paras. 13.128/9

The Senior Investigating Officer will have responsibility for evidence gathering and the investigation of incidents linked to the police operation. One of the main roles of the SIO will be to determine the Criminal Justice Strategy for the event. The PSNI Manual (recently modified) states:

The investigative bronze will have responsibility for any post event investigations linked to the police operation. The bronze will be appointed from either District Policing Command (DPC), Crime Support Team (CST) or Reactive and Organised Crime (ROC) depending on the scale of the investigation. The Criminal Justice Strategy will be determined by the District Command Team with ROC contributing where necessary.<sup>60</sup>

The PSNI Manual goes on to say:

The SIO will direct follow-up investigations based on evidence gathered and will exploit available intelligence. Every effort will be made to identify offenders at the time of offending and effect their arrest (if lawful and proportionate etc) at that time. Where this is not possible, a proactive policy will exist to place offenders before the Court.<sup>61</sup>

Amongst the methods of gathering evidence that may be used are video or still photographic recording, which may involve the deployment of two or three officer evidence gathering teams. The PSNI does not use “forward intelligence teams” such as are deployed by some English forces. In relation to the taking and storing of photographic images, APPPO states:

There are instances where taking and retaining images form part of a public order police response. Overt filming raises significant human rights issues, notably the question of whether police action is compatible with the right to private life protected by ECHR Article 8. The Court of Appeal considered these issues in *Wood v Commissioner of Police of the Metropolis* [2009] EWCA Civ 414.

Paragraph 86 of the judgment states:

The retention by the police of photographs of a person must be justified and the justification must be the more compelling where the interference with a person’s rights is in pursuit of the protection of the community from the risk of public disorder or low level crime, as opposed, for example, to protection against the danger of terrorism or really serious criminal activity.

In light of *Wood*, officers need to be aware of [considerations and principles](#) regarding taking, reviewing, retaining and storing overt images.<sup>62</sup>

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<sup>60</sup> Revised wording notified by PSNI; the manual has yet to be updated (18.1.16)

<sup>61</sup> Ibid Para. 13.139

<sup>62</sup> APPPO Command (n 30) <<http://www.app.college.police.uk/app-content/public-order/command/#taking-and-retaining-photographic-images>> accessed 6th May

The considerations and principles referenced above begin with the “human rights test” of legality, legitimacy of aim, necessity and proportionality. The most important consideration then is that “records should be disposed of when there is no longer a policing purpose for retaining them.”

On a number of occasions, the PSNI has published photographs, in specially printed leaflets and newspapers, of people apparently engaged in public order offences in order to identify and prosecute them. This has been particularly controversial when the photographs have been of children (persons under 18 years old). In 2010, an organised process, “Operation Exposure,” took place in Derry designed to identify rioters at the Bishop Street/Fountain interface. This involved attempting to identify people by circulation of images within the PSNI and other official agencies, and when that failed, publication in leaflets and the Derry Journal. One of the images was of a 14 year old boy and a judicial review was taken alleging breach of his right to privacy (Article 8 ECHR). The case went all the way to the Supreme Court and judgement was given on 1<sup>st</sup> July 2015.<sup>63</sup> By a majority, the court found that Article 8 rights were not engaged, since the complainant could not have an expectation of privacy while attending at a riot, but the court was unanimous in finding that, even if Article 8 rights were infringed, it was justified in the circumstances.

In fact, however, the PSNI should be acting to a higher standard in such cases. In its 2011 Human Rights Thematic Review: Policing with Children and Young People<sup>64</sup> the Policing Board made the following recommendation which was accepted in full by the PSNI:

PSNI policy should be amended to include the following guidance. Police officers should never release images or other details of any person under the age of 18 years into the public domain save where the release is necessary for the purpose of protecting the general public or the young person from serious injury and only after all reasonable methods have been tried and failed. Each and every decision to release a single image or other detail into the public domain must be justified. In each case before the decision is taken the PSNI should conduct a detailed risk assessment and consult with all relevant individuals and agencies. A record of the risk assessment and consultation must be recorded.

In its Update on PSNI Implementation of recommendations, in November 2013, the Policing Board commented that the service had updated its Guidance on the Release of Images of Suspects and Defendants to reflect the wording of the recommendation<sup>65</sup> but that it would keep the situation under review. It remains to be seen whether the Supreme Court decision will affect the PSNI policy.

The Criminal Justice Strategy and associated documents, especially the Event Policy Book, are a significant mechanism of after the event accountability. In a recent case (which is currently on appeal to the Supreme Court) the Northern Ireland Appeal Court overturned a negative finding on a judicial review of the police handling of flags protests passing Short Strand. The judges commented:

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<sup>63</sup> [2015] UKSC 42

<sup>64</sup> <http://www.nipolicingboard.org.uk/index/our-work/content-humanrights/content-publicorder.htm> accessed 15 July

<sup>65</sup> [http://www.nipolicingboard.org.uk/update\\_on\\_the\\_human\\_rights\\_thematic\\_review\\_policing\\_with\\_children\\_and\\_young\\_people.pdf](http://www.nipolicingboard.org.uk/update_on_the_human_rights_thematic_review_policing_with_children_and_young_people.pdf) accessed 15 July

We were also taken through the Criminal Justice Strategy documents and revisions, the strategy associated with Operation Dulcet and the decisions made within the Events Policy Book in the kind of detail which was not open to the learned trial judge.<sup>66</sup>

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<sup>66</sup> [2014] NICA 56 Para. 52

## 4. After the Event

### 4.1 Monitoring Public Order Policing in General

The following is the description in the Policing Board's 2012 Human Rights Report of the post-hoc monitoring of public order policing in general:

In monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Policing Board, through the Human Rights and Professional Standards Committee (the Committee) and the Policing Board's Human Rights Advisor, monitors the policing of public order situations. To assist the Committee in fulfilling this oversight function, the Committee receives public order briefings from PSNI throughout the year. During those briefings, the Committee and the PSNI discuss, for example, the steps taken by the police to engage with local communities and statutory agencies in advance of processions, public meetings and protests. In particular, the Committee has raised the issue of policing tactics, the use of force, resource implications and the criminal justice strategy. While the operational planning and implementation of those plans is an operational matter for the Chief Constable, the Committee is obliged to consider human rights implications of public order policing and community confidence issues. Therefore, the Committee cannot and does not direct the PSNI as to its operational activity but it is determined to continue to hold the Chief Constable to account for the performance of the PSNI in this critical area of policing. To enable that monitoring to be effective the relevant District Commander is required to submit to the Policing Board, as soon as reasonably possible after a public disorder incident, a written record containing details of the nature of the disorder, any force used, any injuries sustained by police officers or members of the public and any damage caused to property. Those records are considered by the Committee.

The Committee also receives and considers, on a six-monthly basis, use of force reports prepared by PSNI. Those reports, which are considered in more detail in Chapter 7 of this Human Rights Annual Report, provide details of any correlation between high incidents of use of force by the police and public disorder incidents.<sup>67</sup>

### 4.2 Monitoring Police Use of Force

The following is the description in the Policing Board's 2012 Human Rights Report of the post-hoc mechanisms for monitoring the use of force by the PSNI in particular:

Mechanisms are in place, both internally and externally, to ensure that PSNI is held to account for all uses of force by its officers. Any incident that involves the use of force by a police officer is recorded in the police officer's notebook and reported to the relevant

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<sup>67</sup> Policing Board (n 44) 72

supervisor. Any such incident may be the subject of a Police Ombudsman investigation regardless of whether or not a complaint has been made.

Where a firearm, an AEP or a Taser have been discharged, the Police Ombudsman will investigate the incident. Where a Taser has been drawn or aimed at a subject, but not discharged, the Police Ombudsman must be notified, but will usually only investigate if a complaint is made. At the conclusion of the Police Ombudsman's investigation, a Regulation 20 report is prepared. The Policing Board receives a copy of all Regulation 20 reports and considers any findings or recommendations contained within them. If a Taser is used (whether drawn or discharged) a Taser evaluation form must be completed and sent to the Association of Chief Police Officers (ACPO). If an AEP is discharged, the relevant District Commander must submit a Form PB1 to the Policing Board. Moreover, after every public disorder incident the relevant District Commander must submit to the Policing Board a 'Form PB2', which provides an overview and relevant details of the use of force during that incident. Those forms are considered by the Policing Board and the Human Rights and Professional Standards Committee (the Committee).<sup>68</sup>

### **4.3 Office of the Police Ombudsman for Northern Ireland**

The Police Ombudsman's Office provides independent, impartial investigation of complaints about the police in Northern Ireland. The Office is independent of the Government and the PSNI and its own investigators have full police powers when investigating complaints. As noted above, the Ombudsman will investigate any discharge of a weapon in any situation and will respond to complaints from members of the public about any alleged misconduct or criminality committed by police officers in public order situations. The Current Directorate of the Office deals primarily with complaints made to the Office about incidents which have occurred in the previous year (members of the public have one year from an incident in which to make a complaint about it, unless the complaint is about a matter deemed by the Police Ombudsman to be grave or exceptional).

Personnel from the Office will generally be willing to meet groups of people from the community to explain their role and how to complain.

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<sup>68</sup> Ibid 81





**February 2016**