

Response to the PSNI consultation and Equality Impact Assessment on the temporary use of spit and bite guards May 2021

Summary and key issues:

- A Spit and Bite Guard (SBG) is a controversial mesh hood, used to prevent a person from spitting or biting on officers or staff. The use of SBGs constitutes a use of force.
- SBG were introduced without consultation in March 2020 by the PSNI as a temporary measure for the duration of the Coronavirus pandemic.
- On 12 November 2020, the NI Policing Board published its Thematic Review into the Policing of Covid 19. This concluded *“spit and bite guards should now be phased out as soon as possible and officers who have been provided with spit and bite guards should, instead, be provided with the necessary Personal Protection Equipment (PPE) or other alternative. The PPE provided should be of sufficient quality to protect these officers from contamination from spitting, aerosol droplets and other bodily fluids reducing the risk of transmission of COVID-19 and other diseases. The use of spit and bite guards should, regardless, cease by 31st December 2020.”*
- On 25 January 2021, the Chief Constable instead extended the provision of SBGs to all frontline officers as a temporary measure for the duration of the pandemic.
- The Chief Constable justified this decision by reference to professional medical advice to the PSNI on the mitigation SBG can provide against COVID-19. However, we have obtained this advice under a freedom of information request and it makes no such reference.
- The Board also recommended that consultation in line with the Section 75 equality duty be taken forward. The PSNI have consequently issued an Equality Impact Assessment (EQIA) for consultation until 21 May 2021. This submission is in response to this EQIA.
- The EQIA itself identifies major adverse impacts on equality from the use of the SBGs, particularly on children and young people and people with a disability, there is also a significant differential on grounds of community background, for which there is no explanation provided.
- We advocate that in accordance with its Equality Scheme, and given the identified adverse impacts in the EQIA, the PSNI should adopt an alternative policy – namely to implement the recommendation of the Policing Board NI and discontinue the use of Spit and Bite Guards (SBGs) immediately.

Commentary on key questions is overleaf to further inform the EQIA.

Do Spit and Bite Guards protect against COVID-19 transmission?

The EQIA states that from March 2020, SBGs were introduced by the PSNI as a temporary measure for the duration of the Coronavirus pandemic, to protect police officers and staff from the threat of airborne viruses or saliva transfer infections by spitting and biting. However, it is apparent that there is little evidence that SBGs protect against COVID-19, and instead the use of SBGs may increase the risk of COVID-19 transmission to officers.

The Policing Board Thematic Review states *“When the Coronavirus was identified as a risk to the people of Northern Ireland it appears that there was an assumption that SBGs would protect police officers from transmission from suspects and detainees with COVID-19”*. However, as time went on, questions about the effectiveness of SBGs arose.

While a SBG obviously reduces the exposure to spitting and therefore the risk of infection through an officers mucus membranes- it has not yet been established that they can offer sufficient protection from a biological perspective in terms of the airborne particles of COVID-19.¹

The manufacturers of SBGs stated that the guards will not protect against transmission of COVID-19. In June 2020, the PSNI acknowledged that they were aware SBGs were not intended to protect against COVID-19.² In addition, Amnesty International NI has provided evidence to the PSNI that the use of the guards may *increase* the risk of COVID transmission:

We believe any struggle involved in applying the hood, which is a foreseeable risk in light of known observed behaviour from using these devices, is much more likely to produce a significant aerosol generating event (such as forced exhalation and coughing) in the transmission of the virus from an infected individual.³

Despite this, the risk of contracting COVID-19 remains the primary justification for both the introduction and continued current use of SBGs by the PSNI.

What was the PSNI’s justification for ignoring the Policing Board recommendation?

The EQIA states that the Human Rights considerations regarding the necessity and proportionality of the use of SBGs was carefully considered prior to the deployment of the guards. However, there is no evidence or discussion of this in the EQIA. The EQIA also overlooks any significant reference to the recent detailed human rights analysis in the Policing Board Thematic Review, which recommend that the use of the guards should cease by the end of 2020.

¹ <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/report-on-the-thematic-review-of-the-policing-responder-to-covid-19.PDF> (page 82).

² “PSNI took the decision to issue Spit Guard Pro to protect against the physical hazard of spitting and/or biting. We are aware that the product will not counter a viral hazard, other than if a virus is possibly present in saliva or blood when spitting or biting.”

³ See <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/report-on-the-thematic-review-of-the-policing-responder-to-covid-19.PDF> at page 85.

Shortly after the Thematic Review, on 23 November 2020, the PSNI stated they would instead be increasing the roll-out of the SBGs to approximately 4000 officers. Under the rationale for this decision, the PSNI stated:

The provision of Spit and Bite Guards during the Covid period provides a high degree of reassurance to operational officers from all disciplines. **Our medical advisors have provided the Chief Constable with professional advice** about the degree of medical mitigation provided by the equipment.⁴ (emphasis added)

Through a Freedom of Information request, CAJ requested and were provided with the professional medical advice to the Chief Constable to this end.⁵

The documents in question “Submissions by PSNI Chief Medical Adviser and team” make reference to the commencement of a research project – on “risk to psychological health” to provide an evidence-base regarding rolling out SBGs in the PSNI.⁶

However, despite the above justification there was no analysis provided about the degree of medical mitigation from COVID-19 that SBGs. Indeed, there was no further reference to SBGs *at all* in any part of the advice.

Rather there was reference to the utility of persons using *face coverings*, as is now mandatory in shops/public transport etc. to reduce transmission.

It is therefore not clear how the EQIA has relied upon this advice to reach the following conclusion, that appears to seek to extend the use of SBGs permanently:

We have considered the medical rationale of the use of the Spit and Bite Guard and the impact of being spat at or bitten by a detained person. The evidence of the PSNI’s Chief Medical Officer supports the use of Spit & Bite Guards in both a Covid and non-Covid environment.⁷

Is the drive behind using SBGs not the risk of blood-borne virus transmission but psychological injury?

The PSNI’s EQIA states:

It is generally accepted that the risk of contracting a blood-borne virus (BBV) from spit/bite injuries is low and that psychological impact is where the primary risk to officers lie.⁸

⁴ From correspondence from the PSNI to Eliza Browning dated 23 November 2020.

⁵ Released under a Freedom of Information request to CAJ, received 23 April 2021. PSNI reference request number F-2021-00656. Includes advice which was presented to PSNI Service Executive Team from PSNI Chief Medical Adviser and their team.

⁶ **14th May 2020** “It is recognised that spitting and biting is associated with adverse physical and psychological health consequences. The Blood and Body Fluid Exposure (BBFE), has an extremely small risk for the transmission of viruses such as Hepatitis B, Hepatitis C and HIV, and what could be argued as a higher risk of transmission of Covid-19 (yet to be determined). The unpleasant natures of being bitten, spat upon is very distressing to those on the receiving end. In order to evaluate the psychological consequences, the OHW Medical Team are commencing a research project this week, led by an OHW Medical Adviser, to quantify the risk to psychological health, in order to provide an evidence-base for the consideration of rolling out spit and bite guards within the wider PSNI”.

⁷ See PSNI EQIA on page 46.

⁸ See PSNI EQIA on page 22

In essence it is asserted that the primary risk to officers of being spat on or bitten is psychological injury, rather than contracting a blood-borne virus.⁹

Therefore, reducing psychological injury to officers appears to be the primary objective of using SBGs.

The EQIA cites the NPCC and the College of Policing materials which state that the 'unpleasant' nature of spit/bite incidents provides the justification for the introduction of SBGs:

In terms of the actual risk to officers and staff, the chances of being infected by communicable diseases through the deliberate or accidental transfer of bodily fluids, such as spit and blood, have been shown to be very low. It is acknowledged that this is not the primary reason why SBGs were introduced and continue to be used by the police service. Instead, SBGs were introduced because spitting or biting is an unpleasant form of assault, and because people should be afforded a sufficient level of protection from such acts if the technology is available.¹⁰

It appears that the primary experience of psychological injury from spit/bite incidents to officers is based on stress and concern around a misunderstanding of their risk of exposure to blood borne viruses, and therefore the proper mitigation for psychological injury resulting from spit/bite incidents is training on the level of risk associated with spit/bite injuries, and effective and timely clinical advice.

The Guidance on management of potential exposure to blood-borne viruses in emergency workers highlights the example of a police officer who was involved in an incident in which an offender spat in the officer's face and mouth. The police officer was given post exposure prophylaxis for hepatitis B and HIV, and was advised to have no contact with a family member undergoing chemotherapy. This caused the officer to experience significant emotional distress. The case study states,

"With the risk of viral transmission through spitting being non-existent or negligible depending on the pathogen, this officer should have been reassured of his extremely low risk of infection and provided with education as to the circumstances through which he could infect others. It is unclear what potential

⁹ The Policing Board Thematic Review reiterates the low risk to officers of contracting blood borne viruses and states:

"A study exploring the extent to which police services deploy spit and bite guards and the rationale underpinning their use shows there is lack of information readily available from police services in respect of quantifying the numbers of police officers who have contracted an infectious disease as a result of spitting and/or bites, despite the fact that risk of infection and the need for subsequent treatment is a driver of police services adopting the use of spit and bite guards, as is the case for PSNI. **The study concludes that consideration must be afforded to the possibility that the use of the guards represents a form of mechanical restraint rather than a means to prevent transmission of infection, especially given the lack of information available from other police services.** The study concludes that "there appears to be no current, overarching guidance from UK national police bodies such as the National Police Chiefs' Council (NPCC) or the College of Policing on the use of spit and bite guards that is readily and easily accessible to the general public, despite substantial professional public interest and concern on their usage." (emphasis added).

¹⁰ See PSNI EQIA page 39

onward transmission there was concern of that would have warranted no in person contact with a chemotherapy patient.”¹¹

To mitigate the risk of psychological injury from spit and bite incidents, officers should be properly trained about the actual risk of transmission of blood borne viruses and should receive quick and accurate clinical advice.

What are the risks and equality impacts of using SBG?

Any use of force must be necessary and proportionate. SBG are a use of force that is inherently degrading, but also potentially lethal, and used disproportionately against people with disabilities.¹²

The EQIA has identified that there are potential adverse impacts on several Section 75 groups, including:

- **Disability (individuals with poor mental health)**
- **Children and young people**
- **Men**

The EQIA identifies that “at least 81% of the uses of Spit & Bite Guard were on a male or female with a disability including mental health disabilities.” This is clearly an adverse impact on people with a disability. The EQIA also references the fact that people with hearing loss may not hear instructions issued by a police officer in a situation where a SBG may be used.

The EQIA states that young people accounted for 75% of all Spit and Bite Guard uses, with 7% of the use on children.

The EQIA states that 11 SBGs have been applied to females, and 84 to males, constituting an adverse impact on men.

In relation to community background, figures for religious belief show that use to date against Catholics is more than double than that for Protestants. The EQIA therefore includes data demonstrating a significant differential. No explanation or analysis is provided as to the reasons for this differential, instead the EQIA concludes that there are no differential or adverse impacts on this category. Despite the interface between political opinion and religious belief as indicators of community background a conclusion is also drawn that no differential/adverse impacts are ‘anticipated’ in this category.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835888/Guidance_on_management_of_potential_exposure_to_blood_2_.pdf see page 16.

¹² See the deaths of people in police custody for which Spit and Bite guards have been contributing factors. Daniel Purdue (2020) <https://www.nytimes.com/2020/09/03/nyregion/spit-hoods-police.html>, Carlos Ingram Lopez (2020) <https://www.nytimes.com/2020/06/25/us/carlos-ingram-lopez-death-tucson-police.html>, Ben C de Baca (2015) <https://www.ibtimes.co.uk/new-mexico-police-officers-fist-bump-mentally-ill-suspect-lays-dead-1595769>, Michael David Jones (2013) <https://eu.tennessean.com/story/news/2015/10/01/death-inmate-3-hours-after-arrest-cost-metro-150k/73140798/>, Daniel Linsinbigler (2014) <https://eu.news-press.com/story/news/local/orange-park/2014/05/07/restraint-chair-death-daniel-linsinbigler/8768079/>, Jack Marden (2016) <https://www.theguardian.com/us-news/2016/jan/11/michigan-death-jail-jack-marden-spit-hood>, Jonathan Pluck (2009) <https://www.heart.co.uk/peterborough/news/local/police-cell-death-accidental/>

Under the section of the EQIA titled **Consideration of measures which might mitigate any adverse impact and alternative policies which might better achieve the promotion of equality of opportunity** the EQIA references an additional section on “Vulnerability” and “Human Rights” which was added to the training video and policy. The policy now states,

"If you are aware that the subject has mental health or another debilitating condition, which the use of a Spit and Bite Guard could exacerbate, the presumption will be that a Spit and Bite Guard should not be used. Where officers or staff are aware that a member of the public is under 18, the presumption will be that a Spit and Bite Guard should not be used."

The EQIA then states, “PSNI believe that the introduction of Spit & Bite Guards reduces the risk of injury to police officers, police staff and detained persons without adverse impact to the listed equality groups.”¹³ As above no evidence is presented for the former claim and the EQIA evidence contradicts the latter assertion.

However, it is not yet evident if the additional references in the policy provide sufficient mitigation to prevent the disproportionate use of the guards on people with disabilities or young people and children, nor is it clear how officers will manage the use of the guards on people who have existing disabilities which are not visible, and therefore not evident to officers, or to children who physically appear to be adults.

In addition, whilst there is no doubt merit in the delivery of ‘Adverse Childhood Experiences’ (ACE) training to all officers, it is not clear that this training and the proposed mitigation of referring a child who has been traumatised using a SBG to Start 360 will reduce the traumatic impact of the use of the guard. The mitigation states:

“If a Spit and Bite Guard was placed over a child’s head and this causes a flashback to a traumatic event, a referral can be made to an organisation such as Start 360 who specialise in helping young people between the ages of 11 and 24.”

It is unclear that a child would disclose a traumatically induced flashback to a police officer, particularly one responsible for placing the SBG.

The most effective mitigation to reduce the current adverse impact of the use of SBGs on people with a disability, children, men and community background is for the PSNI to comply with the Policing Board’s recommendation and immediately discontinue the use of SBGs.

Consultation question (3) on whether “Spit and Bite Guards are a lesser use of force than physical restraint”?

Question 3: states *“In the absence of Spit & Bite Guards, Police may be required to use physical restraint in dealing with people who are spitting or biting. This could increase the likelihood of the subject sustaining injuries.”* The question then seeks agreement that SBGs are a lesser use of force.

We find this question misleading. Guards are exclusively used on people who are already physically restrained. There is not sufficient evidence provided to show that the

¹³ See PSNI EQIA at page 45

use of SBGs has dramatically or otherwise decreased the level of restraint needed prior to their introduction. The PSNI policy states:

“16.15 Officers and Staff must have control of the subject with either mechanical or physical restraints prior to attempting to place the Spit and Bite Guard and it is recommended that they are handcuffed to the rear, this will ensure they cannot remove or adjust the Spit and Bite Guard once it has been applied.

16.16 A Spit and Bite Guard can be applied to a standing, kneeling or prone subject as long as they are under control.”

We believe that this question leaves the incorrect impression among consultees that SBGs significantly reduce the level of physical restraint that was applied prior to their introduction. The Policing Board has stated that the use of force through the guards simply to control a suspect is unlikely to justify the use of the guards.

“Any restraint used must be proportionate, and this includes the principle that the least restrictive method must be chosen. The hooding of detainees has been found to violate Article 3 and obscuring a detainee’s sight for is likely to violate Article 3. If the police officers have taken control of a suspect so that a guard can be placed on that person then to some extent the justification for the use of the hood may have partly disappeared. The use of guards to make it is easier to control a suspect is unlikely to provide a justification in itself.”¹⁴

Alternatives to using spit and bite guards are already in the PSNI’s policy and do not involve additional restraint. These alternatives include:

“16.13 Officers and Staff should consider options to aide de-escalation with the subject and where practicable, an alternative to a Spit and Bite Guard. This may include good communication, donning additional personal protective equipment or placing the suspect in a cell van and keeping under observation.”

We believe that these alternatives should instead be the norm, and will reduce the minimal risk to officers of contracting blood borne viruses from spit/bite incidents, and the serious risk of contracting COVID-19 from aerosol particles from which a spit and bite guard is ineffective against anyway. These alternatives will also reduce the serious risk of harm to people (particularly children and people with disabilities) that a SBG induces.

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¹⁴ <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/report-on-the-thematic-review-of-the-policing-responser-to-covid-19.PDF> (79)