

# **Policing the Protectors: A Narrative Report of PSNI Policing of Environmental Protest in the Sperrins**

**August 2024**

## Introduction

### About CAJ

The Committee on the Administration of Justice (CAJ) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

CAJ has a long track record of working on human rights compliance issues relating to policing. This included a significant role in shaping police reform at the time of the Belfast/Good Friday Agreement.<sup>1</sup>

CAJ undertaken specific work on the regulation of covert policing (use of informants, surveillance etc.,).<sup>2</sup> We also have a body of work on public order policing and on the right to protest. In 2016 CAJ published the report '*How Public Order Policing Works in Northern Ireland: Standards and Accountability*' setting out the legal and policy framework operated by the PSNI. CAJ worked with the Open Society Justice Initiative on an international project which produced a set of '*Principles and Guidelines on Protest and the Right to Information*' grounded in international standards with case studies in Northern Ireland and Honduras, the latter specifically engaging environmental protests.<sup>3</sup> CAJ was also involved in interventions regarding the differential policing of Black Lives Matter protests during the covid pandemic. In March 2021 a motion passed by Derry City and Strabane District Council sought CAJ to inquire into the impact of 'inappropriate policing tactics used against women and vulnerable children in Creggan' to which we provided a written submission.<sup>4</sup>

CAJ is presently in the second phase of a joint policing reform project with our sister organisation in Dublin the Irish Council for Civil Liberties (ICCL), funded by the Community

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<sup>1</sup> See for example publications *Police Accountability in Northern Ireland (1988)* <https://caj.org.uk/publications/reports/police-accountability-northern-ireland-1988/> *The Agreement and a new beginning to policing in Northern Ireland (1999)*, <https://caj.org.uk/wp-content/uploads/2017/03/No.-42-The-Agreement-and-a-new-beginning-to-policing-in-Northern-Ireland-June-1999.pdf>

<sup>2</sup> See for example, report '*The Policing You Don't See (2012)*' <https://caj.org.uk/wp-content/uploads/2017/03/No.-62-The-Policing-you-dont-see-November-2012.pdf> and [details of the 'Third Direction' case](https://privacyinternational.org/legal-action/third-direction-challenge) at: <https://privacyinternational.org/legal-action/third-direction-challenge>

<sup>3</sup> CAJ/OSJI *Principles and Guidelines on Protest and the Right to Information*

<sup>4</sup> <https://meetings.derrycityandstrabanedistrict.com/documents/s34688/Appendix%209.pdf>

Foundations of Ireland and Northern Ireland. The first stage of this project included a major conference held in Queen’s University Belfast in 2021 reflecting on policing reform on the 20<sup>th</sup> anniversary of the Police Service of Northern Ireland (PSNI)<sup>5</sup>, this was followed by a second conference in Dublin in March 2022 to promote learning and forward planning on police reform in both jurisdictions.<sup>6</sup> The second stage of the CAJ-ICCL project initiated with an expert roundtable on combatting racial profiling in law enforcement, held in Derry in June 2023,<sup>7</sup> followed by a conference in Dublin October 2023 on covert policing and surveillance.<sup>8</sup>

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<sup>5</sup> ICCL/ CAJ [Conference report – PSNI@20: Human Rights Reflections on Policing Reform North and South](#) (Queen’s University Belfast, November 2021).

<sup>6</sup> ICCL / CAJ [Conference report – Police Reform in both Jurisdictions: Learning from the Past and Planning for the Future](#) (Westin Hotel, Dublin, 24 March 2022).

<sup>7</sup> <https://caj.org.uk/publications/reports/racial-profiling-in-law-enforcement-iccl-caj-roundtable-discussion-summary/>

<sup>8</sup> <https://caj.org.uk/wp-content/uploads/2024/05/Surveillance-Conference.pdf>

## **Policing of Environmental Protests in the Sperrins**

The issues recorded in this report relate to a series of interactions between the PSNI and a small group of environmental activists (who prefer to be known as “protectors”), specifically around the issue of goldmining in the Sperrin Mountains. The origin of the report lies in a request to CAJ from Friends of the Earth (FoE) to assist in examining police conduct in relation to the protectors.

The allegations raised by the protectors can be grouped into three thematic areas namely allegations that:

- The PSNI had not adequately investigated offences that had been reported to them as crimes by protectors.
- The PSNI had unduly sought to deter protectors from taking part in lawful expressive protest activities; and
- Of undue criminalisation of protectors for legitimate acts of protest.

We note that part of the concerns expressed by protectors are beyond the capacity and remit of the PSNI and oversight bodies to address and are related to broader issues around holding corporations and individuals accountable for breaches of environmental law. Protectors have expressed concerns that the policing and justice system is set up to investigate and punish people who damage private property, but not with people who pollute and breach environmental law. The purpose of this report is not to review environmental regulation and enforcement bodies in NI, but it is worth noting that serious concerns have been consistently raised about the quality and robustness of environmental enforcement and oversight in NI.<sup>9</sup> In the absence of effective enforcement bodies, protectors rely more heavily on policing and judicial remedies to address breaches of environmental law. Considering this, police have a heightened responsibility to ensure that their actions remain impartial, that peaceful protest is facilitated, that alleged crimes reported by protectors are robustly investigated and allegations made against protestors are handled fairly and proportionately.

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<sup>9</sup> Ciara Brennan, Ray Purdy and Peter Hjerp, ‘Political, Economic and Environmental Crisis in Northern Ireland: The True Cost of Environmental Governance Failures and Opportunities for Reform’ (2017) Northern Ireland Legal Quarterly 68(2) 123-157. See also, <https://www.thedetail.tv/articles/audit-office-potential-farm-planning-fraud-not-properly-investigated>

CAJ has not verified any of the allegations reported to us, and therefore none of the allegations have been proven to be true unless otherwise established through a formal investigation or court process separate from this report.

## **Methodology**

CAJ is a non-governmental organisation (NGO). We do not have any investigative powers (for example to compel the disclosure of documentation, footage or to interview officers). The report is therefore essentially limited to a paper-based assessment of the extent to which the incidents alleged would, if proven, be in breach of human rights standards and related PSNI policy.

Material was provided to us by Friends of the Earth, along with written testimony from environmental activists as well as a joint stakeholder submission to the Universal Periodic Review made by a local environmental group.<sup>10</sup> CAJ also met with impacted individuals to obtain further testimony. It is this information upon which we base this response. As stated above, we have not verified the accuracy of the facts alleged unless explicitly stated in the report.

The report is structured as follows:

- Overview of Relevant International Human Rights Standards
- Overview of the Relevant PSNI legal and policy framework.
- Consideration of the allegations made.
- Conclusions.

### **Overview of International Relevant Human Rights Standards**

Rights to protest are fundamental rights within a democratic society protected by human rights treaties. Particularly relevant to protest are right to peaceful assembly, freedom of association and freedom of expression.

The United Nations Human Rights Committee in its general comment on the right to peaceful assembly has stated:

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<sup>10</sup> See this document for reference to the submission:  
<https://documents.un.org/doc/undoc/gen/g22/476/47/pdf/g2247647.pdf?token=DQkZQc8UHGHYexRGOc&fe=true>, See 45 and 63.

The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.<sup>11</sup>

The UK is party to UN human rights treaties which protect these rights, as well as to treaties within the Council of Europe human rights system.

The Council of Europe is the 46-member state European-wide body established to safeguard democracy, human rights and the rule of law. The Council of Europe oversees the European Convention on Human Rights and the European Court of Human Rights. (The Council of Europe should not be confused with the European Union (EU), a separate entity).

The European Convention on Human Rights (ECHR) protects freedom of expression and opinion (Article 10 ECHR) and freedom of assembly and association (Article 11 ECHR). Following the Belfast/Good Friday Agreement the ECHR is incorporated into domestic law through the Human Rights Act 1998.<sup>12</sup> These rights are therefore directly enforceable in the Northern Ireland courts. There is also the common law right of the public to assemble or march in peaceful protest.

Rights to protest place both negative and positive obligations on public authorities, including the police, to ensure that these rights can be exercised in practice. This includes a positive obligation to *facilitate and protect* free assembly. Joint Council of Europe and OSCE Guidelines set out that such positive obligations must be reflected in law and police policy. They require facilitation of assemblies in locations close to the target audience and oblige police to protect protestors from third parties who would seek to undermine the protest:

**Positive obligation to facilitate and protect.** States have a positive duty to facilitate and protect the exercise of the right to freedom of peaceful assembly. This duty should be reflected in the legislative framework and relevant law enforcement regulations and practices. It includes a duty to facilitate assemblies at the organizer's preferred location and within 'sight and sound' of the intended audience. The duty to protect also involves the protection of assembly organizers and participants from

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<sup>11</sup> UN Doc CCPR/C/GC/37 General comment No. 37 (2020) on the right of peaceful assembly (article 21 ICCPR), paragraph 1.

<sup>12</sup> <https://www.legislation.gov.uk/ukpga/1998/42/contents>

third party individuals or groups who seek to undermine their right to freedom of peaceful assembly.<sup>13</sup>

UN Human Rights Committee in its general comment on free assembly also outlines positive and negative obligations as follows:

23. The obligation to respect and ensure peaceful assemblies imposes negative and positive duties on States before, during and after assemblies. The negative duty entails that there be no unwarranted interference with peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause.

24. Moreover, States parties have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives. States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic or provide security. Where needed, States must also protect participants against possible abuse by non-State actors, such as interference or violence by other members of the public, counterdemonstrators and private security providers.<sup>14</sup>

There have long been concerns about undue police interference with environmental activists. The current Undercover Policing Inquiry in England and Wales was set up on the back of revelations of shocking undercover policing practices that involved the infiltration of environmental protest groups.<sup>15</sup>

More recently have been particular concerns regarding restrictions on environmental protests in Europe and beyond. In June 2023 the Council of Europe Human Rights Commissioner Dunja Mijatović issued a statement calling for an end to ‘crackdowns’ on peaceful environmental protests. The Commissioner described threats to the environment as “among the most urgent existential threats to humankind and to human rights” and noted this had led to increased “new, often disruptive, forms of peaceful protest to demand more resolute government action” but that that these “legitimate demands and concerns

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<sup>13</sup> Council of Europe Venice Commission and OSCE Office For Democratic Institutions and Human Rights (OSCE/ODIHR) Guidelines on Freedom of Peaceful Assembly (3<sup>rd</sup> EDITION) CDL-AD(2019)017rev Para 22.

<sup>14</sup> UN Doc CCPR/C/GC/37 General comment No. 37 (2020) on the right of peaceful assembly (article 21 ICCPR), paragraphs 23 & 24.

<sup>15</sup> <https://www.ucpi.org.uk/about-the-inquiry/>

are increasingly being met with repression, criminalisation, and stigmatisation.”<sup>16</sup> The Commissioner was critical of new British Government legislation to stifle protests that would largely target climate protestors.<sup>17</sup> (This legislation does not apply in NI).

Environmental protest cases have come before the European Court of Human Rights. In May 2022 the Court held in a case concerning a protest against proposed gold and silver mining in Romania that there had been a violation of Article 10 ECHR, interpreted in light of Article 11 ECHR. The applicant, who had along with others, handcuffed himself to the entrance to a government building and displayed signs, was subject to a fine which was held to be an unjustified interference with his freedom of expression as it was not necessary in a democratic society with a chilling effect on public speech in the public interest.<sup>18</sup>

Insofar as environmental protestors may face threats to life from third parties ECHR Article 2 (right to life), further to the *Osman* ruling, places positive obligations on the state to take operational steps to protect persons.

Since 2005, the UK has been a party to the Aarhus Convention, which provides for access to information, public participation in decision-making and access to justice in environmental matters. The Aarhus Convention also explicitly requires the State to protect environmental protestors:

3(8). Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.<sup>19</sup>

In January 2024, the UN Special Rapporteur on Environmental Defenders under the Aarhus Convention Michel Forst issued an urgent statement highlighting the “increasingly severe crackdowns on environmental defenders in the United Kingdom, including in relation to the exercise of the right to peaceful protest.”<sup>20</sup> The Special Rapporteur has since confirmed that he has not yet seen a situation as concerning for environmental protestors as what is happening in the UK.<sup>21</sup>

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<sup>16</sup> <https://www.coe.int/en/web/commissioner/-/crackdowns-on-peaceful-environmental-protests-should-stop-and-give-way-to-more-social-dialogue>

<sup>17</sup> As above.

<sup>18</sup> [Judgment Bumbes v. Romania - Fine for protest against mining of precious metals in UNESCO world heritage site \(coe.int\)](https://www.coe.int/en/web/commissioner/-/judgment-bumbes-v-romania-fine-for-protest-against-mining-of-precious-metals-in-unesco-world-heritage-site)

<sup>19</sup> <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

<sup>20</sup> [https://unece.org/sites/default/files/2024-01/Aarhus\\_SR\\_Env\\_Defenders\\_statement\\_following\\_visit\\_to\\_UK\\_10-12\\_Jan\\_2024.pdf](https://unece.org/sites/default/files/2024-01/Aarhus_SR_Env_Defenders_statement_following_visit_to_UK_10-12_Jan_2024.pdf)

<sup>21</sup> <https://www.lar.earth/statement-from-un-special-rapporteur-michel-forst/>



Also relevant are broader international (UN) and Council of Europe standards relating to policing, on matters such as the use of force and ethical policing standards.

This includes the UN Code of Conduct for Law Enforcement Officials<sup>22</sup>, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>23</sup> as well as the Council of Europe European Police Code of Ethics which makes it clear that “The police shall carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination.”<sup>24</sup>

The ECHR also provides a framework that places limitations on covert policing activities such as surveillance and the use of informants. Under Article 8 ECHR (rights to private and family life) any use of such powers must be in accordance with a clear legal framework and proportionate to pursuing one of a number of listed ‘legitimate aims’ which include tackling crime. The proportionality element of the test however implies that such powers should only be used in relation to serious crime. This has led two UN Special Rapporteurs in a Joint Report to ultimately conclude that undercover policing of protests is “highly intrusive and carries a high risk of rights violations and therefore should not be allowed unless reasonable grounds exist to suspect that a serious criminal act is likely to be committed.”<sup>25</sup> The use of informants as ‘agent provocateurs’ for entrapment purposes also conflicts with Article 6 ECHR (the right to a fair trial).

All of the above standards are relevant to the policing of environmental activists in Northern Ireland. A number of such standards are codified into policy binding on the PSNI, particularly in relation to the PSNI Code of Ethics, published in 2008 in accordance with the ECHR.<sup>26</sup> PSNI officers are required to comply with the provisions of the Code of Ethics, which forms part of the standards against which a complaint of PSNI misconduct will be assessed. The following section further covers the domestic legal and policy framework in this jurisdiction.

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<sup>22</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials>

<sup>23</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>

<sup>24</sup> <https://rm.coe.int/16805e297e>

<sup>25</sup> Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns on the proper management of assemblies, UN Doc A/HRC/31/66 (4 February 2016), available at [http://freeassembly.net/wp-content/uploads/2016/02/A.HRC\\_31.66\\_E\\_with\\_addendum.pdf](http://freeassembly.net/wp-content/uploads/2016/02/A.HRC_31.66_E_with_addendum.pdf) para. 77

<sup>26</sup> <https://www.nipolicingboard.org.uk/files/nipolicingboard/publications/code-of-ethics.pdf>

## Overview of the Relevant PSNI legal and policy framework.

The General Duties of PSNI officers are set out in Section 32 of the *Police (Northern Ireland) Act 2000*, these are:

- (a) to protect life and property;
- (b) to preserve order;
- (c) to prevent the commission of offences;
- (d) where an offence has been committed, to take measures to bring the offender to justice.<sup>27</sup>

### ***Duty to protect life***

The duty to protect life is further codified into a PSNI Service Instruction on ‘Threats to Life’. This sets out that the PSNI must protect persons subject to threats and ensure an investigation takes place:

Section 32 (1) (a) sets out general duty on police to protect life. It also requires police to take action to prevent the commission of offences and investigate where offences have been committed [and],

Police officers should consider whether the threat indicates that an offence may be, or has been committed, such as threats to kill, harassment or a conspiracy offence and ensure that an investigation takes place as appropriate.<sup>28</sup>

This PSNI Service Instruction references the positive obligations arising under Article 2 ECHR, including the obligation to avert a real and immediate threat to life to which it was, or should have been aware of. The Service Instruction defines a threat to life as applying in “other circumstances where, as a result of a deliberate intention of the criminal act of another, the police or other Law Enforcement Agency has identified a real and immediate threat to the loss of life or to cause serious harm or injury to another.” The legally binding nature of these ECHR Article 2 duties is set out as follows:

Section 6 of the Human Rights Act 1998 makes it unlawful for the police as a public authority to act in a manner incompatible with a person’s protected human rights. This means that the police can be held liable for a failure to comply with Article 2.

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<sup>27</sup> <https://www.legislation.gov.uk/ukpga/2000/32/section/32>

<sup>28</sup> <https://www.psni.police.uk/sites/default/files/2023-11/Threats%20to%20Life%2020%20January%202022%20.pdf>

The service Instruction also reminds officers of their obligations under Article 1 (Professional Duty) and Article 2 (Police Investigations) of the Code of Ethics of the PSNI.

***Duties to investigate:***

The general duty on PSNI officers requires steps to bring offenders to justice.

Article 2 of the PSNI Code of Ethics sets out obligations for police investigations which it stipulates “upon reasonable suspicion of an actual or possible offence or crime... [investigations] shall be conducted in a prompt, thorough, impartial and careful manner so as to ensure accountability and responsibility in accordance with the law.”<sup>29</sup>

The Code of Ethics further states,

Subject to the rules governing confidentiality, victims shall be updated on the progress of any relevant investigations in accordance with Police Service policy and procedure.

Government guidance states that victims of crimes should be informed after three months if the police have not identified a perpetrator.<sup>30</sup> Regarding the treatment of victims of crimes, the PSNI Code of Ethics states:

2.3 Police officers shall treat all victims of crime and disorder with sensitivity and respect their dignity... Police officers shall take account of the particular needs of witnesses and shall be guided by Police Service policy and procedure for their protection and support, in particular, where the intimidation of witnesses is a risk.

The PSNI service instruction on ‘Supporting Victims and Witnesses’ states that victims of crime can expect:

- to receive an update, within 10 days, on what police are doing to investigate their crime;
- to receive further appropriate updates at agreed times;...
- to be informed where a suspect has not been identified in connection with the crime; and
- to be informed, without unnecessary delay, about any decision not to proceed with or to end an investigation or to use one of the alternative disposals available to the police and the reasons for this.<sup>31</sup>

***PSNI officer conduct***

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<sup>29</sup> <https://www.legislation.gov.uk/nisr/2016/41/schedule/part/2/made>

<sup>30</sup> <https://www.nidirect.gov.uk/articles/police-procedures>

<sup>31</sup> <https://www.psni.police.uk/sites/default/files/2022-09/Supporting%20Victims%20and%20Witnesses%2029%20May%202018.pdf>

The PSNI Code of Ethics provides that:

Police officers shall act with integrity towards members of the public and their colleagues so that confidence in the Police Service is secured and maintained. They shall avoid all forms of behaviour that may reasonably be perceived to be abuse, harassment, bullying or victimisation.<sup>32</sup>

### ***Use of informants in a protest context***

The Covert Human Intelligence Sources (CHIS) draft revised Code of Practice,<sup>33</sup> relates to the use of “informants” known as “CHIS”. This states that public authorities must ensure that all use or conduct of a CHIS is: “necessary and proportionate to the intelligence dividend that it seeks to achieve [and] in compliance with relevant Articles of the European Convention on Human Rights (ECHR), particularly Articles 6 and 8.”<sup>34</sup> The code elaborates that:

3.5 The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary.”<sup>35</sup>

Guidance from the National Police Chief’s Council (NPCC) states the following regarding the use of CHIS in relation to protests [emphasis added]:

CHIS deployments are made lawful by an authorisation under Section 29 of RIPA [The Regulation of Investigatory Powers Act 2000]. CT [counter terrorism] authorisations utilise the broad lens of “national security”, while policing must use the narrower gateway of “prevention and detection of crime and disorder”. **This is classed as an intrusive tactic and as such the bar is set quite high in relation to the level of criminality.** Crime is quite easily defined, but ‘disorder’ is less easily defined. There is no overarching definition of what constitutes disorder. The current jurisprudence does provide significant assistance in that disorder should mean criminal disorder that is activity that constitutes a crime, and a serious enough crime to warrant the deployment of a CHIS. **RIPA is clear that CHIS-related activity in relation to lawful protest alone, will never be legal, necessary or proportionate.**<sup>36</sup>

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<sup>32</sup> Article 7 PSNI Code of Ethics: Integrity 7.1

<sup>33</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/104002/7/CHIS\\_Draft\\_Revised\\_Code\\_of\\_Practice\\_-\\_December\\_2021\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/104002/7/CHIS_Draft_Revised_Code_of_Practice_-_December_2021_FINAL.pdf)

<sup>34</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/104002/7/CHIS\\_Draft\\_Revised\\_Code\\_of\\_Practice\\_-\\_December\\_2021\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/104002/7/CHIS_Draft_Revised_Code_of_Practice_-_December_2021_FINAL.pdf) (page 11)

<sup>35</sup> As above.

<sup>36</sup> <https://assets-hmicfrs.justiceinspectorates.gov.uk/uploads/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf> (page 31-32).

### ***Lawful restrictions on protests***

The CAJ report, *How Public Order Policing Works in Northern Ireland: Standards and Accountability*, tracks the standards of public order policing for the PSNI, and highlights a basic principle underlying all 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.”<sup>37</sup>

In addition to the Human Rights Act 1998 the two key statutes relating to protests are:

- The Public Processions NI Act 1998, providing regulatory regime for moving public assemblies (parades, marches etc).
- Public Order NI Order 1987, regulatory regime for static protests.

The Public Processions act established the Parades Commission, whose policy documents include *Parades Commission, statutory Guidelines, Procedural Rules and a Code of Conduct*, which have the status of secondary legislation. As indicated above, the regulatory regime, including notification requirements, relates to parades and marches and not to static protests (save counter protests to parades.) It is less relevant to the issues in this report.

The *Public Order NI Order 1987* grants powers to senior PSNI officers to impose restrictions on static protests (‘open air public meetings’) but only when the officer holds a reasonable belief that the protest may result in ‘serious public disorder, serious damage to property or serious disruption to the life of the community’; or intimidation of others.<sup>38</sup> There are also a number of other criminal offences under the order including ‘provocative conduct’ at a public meeting (including threatening or abusive words or behaviour with intent to provoke a breach of the peace, or ‘obstructive sitting’ in a public place (whereby traffic or other lawful activity is wilfully obstructed)).<sup>39</sup> Such provisions must only be applied in a manner compatible with ECHR rights.

In relation to further codified policy the PSNI have issued a “*Manual of Policy, Procedure and Guidance on Conflict Management*.”<sup>40</sup> This should be read in conjunction with UK-wide *Authorised Professional Practice for Public Order (APPO)*,<sup>41</sup> the guidelines of which the PSNI

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<sup>37</sup> <https://caj.org.uk/wp-content/uploads/2017/03/No.-67-How-Public-Order-Policing-Works-in-Northern-Ireland-Standards-and-Accountability-Feb-2016.pdf>, page 1.

<sup>38</sup> <https://www.legislation.gov.uk/nisi/1987/463/part/II>

<sup>39</sup> <https://www.legislation.gov.uk/nisi/1987/463/part/IV>

<sup>40</sup> <https://www.psnipolice.uk/sites/default/files/2022-09/Chapter%2013%20Public%20Order.pdf>

<sup>41</sup> <https://www.college.police.uk/app/public-order>

have adopted. Events which fall under the remit of these guidelines include single issue protests, including environmental issues.<sup>42</sup>

## **Oversight and accountability of the PSNI**

Acting outside of the law and policy that is set out above is likely to constitute police misconduct. Further to peace-process reforms there are a number of policing accountability bodies with powers to investigate or monitor the PSNI. This includes the Police Ombudsman and Policing Board as follows.<sup>43</sup>

### ***Police Ombudsman for Northern Ireland***

The Police Ombudsman<sup>44</sup> has the statutory function to investigate complaints of misconduct and criminality against PSNI Officers. To this end, the Ombudsman has formal policing powers, including questioning PSNI officers and recovering evidence and footage in order to investigate such complaints. The Current Investigations Directorate undertakes this.<sup>45</sup>

In addition to the individual complaints function, under powers inserted as a result of s13 of the Police Act NI 2003,<sup>46</sup> the Police Ombudsman has broader powers to conduct a ‘thematic investigation’ into current practices and policies of the PSNI where it is in the public interest to do so. These particular ‘thematic’ powers are relevant to circumstances where an area of policing could be investigated relating to matters that are systemic.

### ***Northern Ireland Policing Board***

While not a complaints-based investigative body, the Northern Ireland Policing Board,<sup>47</sup> which was established for police accountability, independently monitors PSNI compliance with the Human Rights Act 1998, the ECHR and other human rights instruments. It has an independent Human Rights Advisor to assist with this function and had the power to carry out human rights thematic reviews of specific areas of policing.<sup>48</sup> It provides a Human Rights

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<sup>42</sup> <https://caj.org.uk/wp-content/uploads/2017/03/No.-67-How-Public-Order-Policing-Works-in-Northern-Ireland-Standards-and-Accountability-Feb-2016.pdf>, page 17.

<sup>43</sup> Whilst not specific to policing the Northern Ireland Human Rights Commission (NIHRC) has formal powers of investigation in relation to its functions that include keeping under review the effectiveness of law and practice relating to the protection of human rights. The NIHRC has formal investigation powers under s69A of the Northern Ireland Act 1988 Act. These include powers to compel the production of information, documents and oral evidence. The NIHRC is to publish reports of its investigations. There are some qualifications on these powers, including a range of ‘national security’ qualifications under s69B.

<sup>44</sup> <https://www.policeombudsman.org/>

<sup>45</sup> <https://www.policeombudsman.org/About-Us/Current-Investigations>

<sup>46</sup> <https://www.legislation.gov.uk/ukpga/2003/6/section/13>

<sup>47</sup> <https://www.nipolicingboard.org.uk/>

<sup>48</sup> <https://www.nipolicingboard.org.uk/human-rights-thematic-reviews>

Monitoring Framework which sets out the legal framework and human rights standards that apply to policing.<sup>49</sup>

## Consideration of allegations

This section involves consideration of the allegations made by the protectors regarding policing practice across the three thematic areas, namely that:

- The PSNI had not adequately investigated significant offences that had been reported to them as crimes by protectors.
- The PSNI had unduly sought to deter protectors from taking part in lawful expressive protest activities; and
- There had been attempts to criminalise protectors for legitimate acts of protest.

### 1. Allegations of failures to adequately investigate offences

Concerns have been expressed by protectors that their reports of the various alleged assaults, harassment, and intimidation they experienced as a result of their opposition to the gold mining have not been adequately investigated as criminal conduct, resulting in a lack of trust and confidence in policing.

By contrast, protectors are concerned that allegations of criminal activity against protectors are allegedly swiftly investigated, despite a lack of evidence to substantiate them. This has led to a perception that the police are not impartial.

Due to the nature of issues involved (an on-going dedicated protest) a group of about half a dozen protectors have reported the majority of the incidents. As CAJ, we cannot independently verify that these allegations happened, unless we explicitly state that we have verified an element of the allegation in the report:

- a. On 10 and 11 June 2019, police allegedly informed three protectors, that they had received credible threats against their lives. The protectors allege that police did not provide any information about where the threats came from or how they were delivered. CAJ has confirmed that the police informed at least one protector of the

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<sup>49</sup> <https://www.nipolicingboard.org.uk/files/nipolicingboard/publications/human-rights-monitoring-framework.pdf>



viable threat against them, via police logs from a subject access request to the PSNI. The PSNI log states that “police contacted [the protector] to inform [them] that there was a viable threat against [them].” There is no further detail from the police log regarding the source of threat or further action taken in relation to the threat.<sup>50</sup>

- b. One protector allegedly received several harassing phone calls, two years apart (one in 2017 and two in 2019). On 9 June 2019 the protector allegedly received a phone call in which the caller spoke about putting the protector’s children in bin bags. CAJ has witnessed evidence of the phone call (video footage of the protector listening to the call on speaker phone) and has confirmed that the protector provided a statement to the police regarding this incident as well as copies of the audio recording of the phone calls.<sup>51</sup>
- c. On 22 April 2019, a protector was allegedly approached by two people who were leading a crowd of people and shouting abuse at the protector. The protector alleges that they felt fearful for their safety and was helped into their car by a passer-by. The protector alleges that a person who was shouting at them banged hard on their car door side window. The protector felt unsafe leaving their house for a long time. This was not reported to the police, as the protector felt that prior reports were unaddressed.
- d. On 24 January 2019, a local protector on foot who was photographing alleged oil pollution reports having allegedly been hit by a tractor driven off the Camcosy Road, Gortin. The driver allegedly told the protector that he would smash the protector’s head in and smash their camera. CAJ has confirmed through a subject access request that the protector gave a statement to the police, as well as video footage of the incident on a USB stick.<sup>52</sup>

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<sup>50</sup> There is no police reference number for this, but the police log from the subject access request on file with CAJ states that this occurred on 11/06/2019.

<sup>51</sup> There is no police reference number in the police log from the subject access request, but the report to police is dated 09/06/2019. A subsequent police log dated 23/08/19 states that police left the protector a voicemail in relation to the matter being reported to the PPS (it is unclear if this refers solely to the phone call, or in relation to an alleged assault that occurred when the protector allegedly attempted to confront the person making the calls). CAJ has copies of a letter to the protector from the public prosecution service (PPS) stating that a decision has been taken not to prosecute due to an insufficient amount of evidence. The letter may refer to this incident, but it is not clear.

<sup>52</sup> From a subject access request on file with CAJ, police reference CC2019012400925, which states, “offenses against the person- Caller to the station to report a tractor driver tried to run [them] over at approx. 14.00 hrs today. *Please find statement dated 24/01/19 enclosed, Please find statement dated 25/01/19.*” Six months later, there is a police log stating that there will be a Statement of Evidence from the protector re their



- e. On 04 August 2020, a protector on foot was allegedly hit by the wing mirror of a van on the Mullydoo/Crockanboy Road, Greencastle. PSNI logs via a subject access request confirms that the police arrived on the scene, and state that “the involved vehicle’s wing mirror had struck [the protector] as it passed by [them]”.<sup>53</sup> Subsequently, the protector provided a statement to the police and was interviewed. The subject access request provides no further information about the incident and the protector is unaware of any further action being taken.
- f. On or about 20 April 2019 a protector was allegedly harassed at their home and accused of participating in paramilitary activity. They allegedly reported the incident to the police and according to the protector the response of the police was to ask whether the protector was “for or against the goldmine”. This protector allegedly provided a statement to the police but decided not to press charges and decided not to report future similar incidents to the police.<sup>54</sup>
- g. On 5 February 2020, a protector was allegedly physically wrestled to the ground on the gold mining site, sustaining injuries which led to an ambulance taking them to a nearby hospital.<sup>55</sup> The protector’s phone was also allegedly broken in the incident. The protector alleges that they reported the incident to police but was not aware of any action having been taken.<sup>56</sup>
- h. In 2020, a protector was allegedly in a hit and run incident in which a car hit the protector, sending them over the top of the car. It was alleged that the protector had hit the window of the car with a stone. The protector states that they were hospitalised due to their injuries. The protector alleges that this was reported to the police and that they believe the case was referred to the PPS which decided not to prosecute. The protector alleges that counter allegations were made against the protector that the protector had thrown a rock at the window of the car, the

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allegation of assault, but it is not clear if it refers to the above incident. It is not clear if further action was taken.

<sup>53</sup> From a subject access request on file with CAJ, police reference CC2020080400584, logged 04.08.2020.

<sup>54</sup> Solely derived from allegations and victim testimony.

<sup>55</sup> From a subject access request the PSNI record of a different protector who was on site after the incident states,

“Police received a report that protestors were at [the gold mining site] and were shouting abuse at [people]. It was reported that one of the protestors was alleging to have been knocked to the ground.”

Police reference number CC2020020500401, police log 05/02/2020.

<sup>56</sup> See above, the protector who came on scene after the incident subsequently reported to the PSNI that a person had made an alleged threat to ‘do the same to him’ (referring to the protector who was allegedly knocked down). The protector attended the station and provided a statement. Police log 05.02.2020, 06.02.2020,03.03.2020.

protector was allegedly issued with a caution, costs for repairing the window, and a restraining order.<sup>57</sup>

- i. On 25 May 2021, a protector was driving along the Pollanroe Road, Greencastle and allegedly saw two parked cars and three people standing near the road. The protector parked their car, and approached the people, asking them what they were doing near the road.<sup>58</sup>

Around the same time, another protector was driving past, parked and came over to see if the first protector was okay. One of the people standing by the road allegedly called the first protector by their name, which frightened the protector because they didn't know how the person knew their name. Both protectors allegedly repeatedly asked the people who they were, but they did not say. Instead, the people got into their cars (one in one car and two in another). The second protector told the people in the car that they would call the police.<sup>59</sup> While standing in the road filming one of the cars, the second protector was allegedly driven at and hit on the leg with the car. CAJ has seen video footage of the incident.

CAJ has seen the PSNI log for both protectors via subject access requests. In relation to the second protector (who was allegedly hit on the leg), the PSNI log states that they attended the incident. The next day, they contacted the second protector to arrange a Statement of Evidence, but the protector was seeking medical attention. The PSNI informed the second protector that the "suspect was due in the next week for questioning and that [the protector] would be updated on the outcome of this".<sup>60</sup>

The police also informed the protector that counter-allegations had been made against them in relation to criminal damage and obstructing the road and that a Statement of Evidence would be arranged regarding those allegations.<sup>61</sup> The

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<sup>57</sup> Solely derived from allegations and victim testimony.

<sup>58</sup> From witness statement provided to the police on file with CAJ.

<sup>59</sup> See above.

<sup>60</sup> From the second protector's subject access request to the PSNI, on file with CAJ. Police reference number CC2021052501302, police log 25.05.2021, 26.05.2021, 01.06.2021,

<sup>61</sup> The subject access log contains a separate PSNI reference number CC2021052502098, logged on the same day as the road traffic collision injury report, 25.05.2021. This log states:

"Police received a report of harassment and obstruction of [people] within the vicinity of Pollanroe Road. It was reported that [the protector] arrived at the site in a silver 4x4 vehicle and parked next to a [person's] vehicle, causing the vehicle to be blocked in. It was alleged that [the protector] then used [their] mobile phone to film the [person], demanding who they worked for and what they were doing."

protector was informed that “any future improper behaviour directed towards [the same people], if reported to police, may be deemed as harassment.”<sup>62</sup> It is unclear from the subject access request what happened to the second protector regarding the counter allegations.

The police log records numerous attempts to contact the second protector to arrange an interview. An interview is arranged, and the police state that this matter will be reported to the PPS.<sup>63</sup>

On the day of the road traffic collision incident, the PSNI log in relation to the first protector states, “Police spoke to the [the protector] who showed officers video footage of the incident. [The protector] did not wish to supply any personal details and did not wish for police to take a recording of [the] footage.”<sup>64</sup> The protector denies this and alleges that they had wanted the police to record the footage of the incident, and was willing to supply personal details.

The police log goes on to state that three days after the incident, the first protector had left a statement and video evidence of the incident at the police station.<sup>65</sup> Several months after the incident, the police log states, “Police provided advice on how to avoid any future harassment claims.”<sup>66</sup>

The case against the driver of the car was allegedly investigated and brought to court but prior to a hearing, an agreement was allegedly reached without the victim’s knowledge, with two charges dropped, and the driver given a caution for leaving the scene of an accident.<sup>67</sup>

- j. In 2020, a protector provided the police with a memory pen containing screenshots from social media of alleged online abuse targeted at protectors allegedly by supporters of the proposed goldmine. A subject access request confirms that the

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It is unclear from the subject access request and police log why and when allegations of criminal damage were made against the protector.

<sup>62</sup> From the second protector’s subject access request to the PSNI on file with CAJ, police log 01.07.2021.

<sup>63</sup> See above, at police log 23.09.2021.

<sup>64</sup> From the first protector’s subject access request to the PSNI on file with CAJ, police reference number CC2021052501302, police log dated 25/05/2021.

<sup>65</sup> See above, police log dated 29/05/2021.

<sup>66</sup> See above, police log dated 06/07/2021.

<sup>67</sup> Solely derived from allegations and victim testimony.

police took a statement from the protector and sent the incident to the PPS.<sup>68</sup> It is not clear what happened after this.

- k. On 21 August 2021, a protector was allegedly followed by a suspicious vehicle for at least seven miles and reported this to the police. The protector did not have the vehicle licence plate number.

## **2. Allegations the PSNI had unduly sought to deter protectors from taking part in lawful expressive protest activities.**

Concerns have been expressed by protectors at PSNI actions to deter participation in the anti-goldmining campaign. Most of the incidents involve one protector who alleges a pattern of issues around PSNI actions to deter protest and participation in campaigns.

In 2018 the protector alleges that threats were made from a person claiming to be a plain clothes officer to the protector's family members for their involvement in the anti-goldmining protests; being pulled over while driving by police and offered money for informing on the campaign as well as being told that others in the campaign were informants. In 2021, the protector alleges that during a hard stop they were put out of their car and held at gunpoint for allegedly breaching bail conditions which they had not breached and alleges that police cars shined full beams outside of their house for two hours on two consecutive nights.

In 2021, a different protector allegedly reported an incident of harassment to the police. The protector alleges that the police called them and said there could be "extenuating circumstances" for the incident and that if the police were involved it could "escalate things". The protector allegedly said that they wished to proceed with the complaint.<sup>69</sup>

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<sup>68</sup> From a subject access request on file with CAJ, police reference CC2020071601940. The police log indicates multiple attempts from the PSNI to arrange a statement of complaint from the protector. The police log 12.11.2020 records that the protector provided a statement and a memory pen with screenshots from social media.

<sup>69</sup> A subject access request on file with CAJ states a police log of this incident, although the police log differs from the protector's recollection. The police reference number is CC2021123001808, and the date of the first log is 30/12/2021. The log mentions that the protector "contacted police to discuss anti-social behaviour from another [person]" The log states that the protector mentioned there may have been CCTV footage of the incident. The log also states that the protector told police that they were "unsure if [they] wished to proceed with a complaint at this time". The protector maintains that this is untrue, and that they had told police that they wished to proceed with a complaint. Approximately a month later, the police log states that the protector made further allegations against the same person, and that the case was re-opened to take a statement from the protector. The protector maintains that they did not provide further allegations, and alleges concern that the CCTV footage was not obtained.

As above while we are unable to independently verify any of the reported allegations, should they be substantiated we set out in the conclusions the extent to which they would be in breach of police policy.

### **3. Criminalisation of the Protectors**

While as CAJ we are unable to independently verify any of the reported allegations, we have received reports of several criminal charges being brought against protectors for exercising the legitimate right to protest, including:

- a. In 2019, in response to Fermanagh and Omagh District Council's alleged refusal to deal with the issue of gold-mining licenses, a group of protectors staged a sit-in protest on 1 October 2019.<sup>70</sup> Protectors allege that they peacefully left the building when directed to do so by police. A police subject access request states that the police "received a report of a group of around 25 gold mining protestors having gained entry to the Council offices. It was alleged that the protestors caused public disorder and that they were aggressive with the care taker."<sup>71</sup> Almost two years later, protectors allege that police called at the homes of eight protectors and offered them the option to accept a caution rather than prosecution; however, the protectors believed that this would have implied acceptance of guilt of an offence, so no protector accepted the caution as they state that they had been exercising their democratic right to protest.<sup>72</sup> The protectors allege they have no closure about this, and do not know what will happen next.
  
- b. On 13 March 2021, a protector was charged with aggravated trespass arising from a peaceful protest when they chained themselves to the gate of an entrance to the gold mining site.<sup>73</sup> Security staff inside the gate had to wait until the police arrived to cut off the chain before leaving in their cars for a scheduled shift change.<sup>74</sup> A pedestrian gate was open and accessible. The protector was granted bail subject to the condition that they were not allowed within 500 meters of the goldmining site.<sup>75</sup>

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<sup>70</sup> See press coverage: <https://www.tyronecon.co.uk/news/2019/10/02/news/campaigners-arrested-after-heated-council-meeting-6300/>

<https://www.impartialreporter.com/news/17941405.eight-arrested-protestors-storm-council-building/>

<sup>71</sup> From a subject access request on file with CAJ, police log 01.10.2019.

<sup>72</sup> 'Police issue cautions two years after anti-mine protest'. Tyrone Herald Newspaper. 16 August 2021

<sup>73</sup> 'Trespass charge after protester chained himself to mining company gates', Tyrone Constitution Newspaper, 1 April 2021.

<sup>74</sup> From a witness statement on file with CAJ, dated 15 March 2021.

<sup>75</sup> From a PSNI charge sheet on file with CAJ, dated 30/03/2021.

According to a news article which described the detail of a court hearing, a primary issue raised in court was whether the protector could be held liable for trespassing on goldmining property if the legality of the goldmining activity was still in question.<sup>76</sup> The defence challenged the legality of the arrest, and argued that for trespass to succeed, the activity of the occupier of the land must be lawful. Defence counsel argued for the case to be dismissed because at the time of the charge, the goldmining company did not have Planning Permission and were in breach of previously granted planning permission.<sup>77</sup> Defence counsel asked what investigation the PSNI had taken to ensure the lawfulness of the activity that the protector was alleged to be trespassing on. The PSNI officer responded that they were not aware of any such investigation, but that one may have happened.

The protector alleges that efforts to frustrate their opposition to the mine can be seen in the time, inconvenience and expense caused to them through multiple court appearances, they allege that they appeared in court over 14 times without their case being heard.<sup>78</sup>

- c. A protector was charged with blocking a road and resisting arrest on 23 January 2019 when he allegedly challenged the driver of a Waste Disposal tanker who had allegedly discharged part of his load into the sheugh on the Camcosy Road, Gortin. CAJ has confirmed through subject access requests that the protector was arrested and interviewed in relation to this incident. The custody record states that the police had received reports “that motorists had illegally blocked Camcosy Road, Greencastle, using their vehicles to prevent a lorry from travelling along the road.”<sup>79</sup>

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<sup>76</sup> Trespass charge after protester chained himself to mining company gates’, Tyrone Constitution Newspaper, 1 April 2021.

<sup>77</sup> See above. CAJ also has on file a response to a request under the Environmental Information Regulations from Fermanagh and Omagh District Council which asks the council if the gold mining company was in breach of planning permission on the date of the incident. The council response is:

“Yes. For the purposes of the Planning Act (NI) 2011 failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control. As the site has not been decommissioned and restored in accordance with the Site Decommissioning Method Statement and Restoration Method Statement then there was a breach of planning control at the site on 13/03/21.”

<sup>78</sup> Solely derived from allegations and victim testimony.

<sup>79</sup> From the custody record of the protector on file with CAJ, arrest time dated 23/01/2019, Reason Obstruction of Road.

- d. In 2019, another protector was charged with criminal damage for allegedly damaging a fence owned by the goldmining company. The protector alleges that they had cut two cable ties attached to an already broken fence. According to a news article, two years later the protector was acquitted due to a lack of evidence after it emerged that the damage to the fence had been caused previously.<sup>80</sup>
- e. While allegedly staging a peaceful rooftop protest on 13 July 2020, two protectors were allegedly cautioned for the offence of criminal damage for a broken antenna on the roof. CAJ has confirmed through a subject access request that at least one protector was interviewed as a voluntary attender by the police on 15 February 2021, and was cautioned for the offence of criminal damage in relation to a broken antenna on the roof.<sup>81</sup>
- f. Two protectors were allegedly charged with harassment for speaking to people and asking them who they were and what they were doing. A subject access request confirms that in relation to at least one protector, on 7 July 2021 the police received a report that the protector was recording people.<sup>82</sup> The protector was interviewed by the police. They allege that they have had to appear in court several times but that their case has been subject to numerous adjournments. The subject access request indicates that it was against the protector's bail conditions to be near these particular people. The protector stated to the police that they had followed a suspicious vehicle and once they became aware that the vehicle was being used by these people, they left the area.
- g. On 12 January 2022, two protectors were allegedly on a private laneway outside the goldmine, monitoring the site and documenting activity. After being told that they were trespassing, they allege that they left to go confirm that they had the right to be present from the landowner (who lived nearby). When they came back, three police cars and nine police officers were allegedly present. The landowner allegedly presented proof of ownership and informed the police that the protectors had the right to be there. Police allegedly left briefly to make a phone call and when they came back, they arrested both protectors for aggravated trespass, taking them into custody and interviewing them. Police allegedly stated to the protectors that the laneway was jointly owned, and one of the owners (living in England) was contacted

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<sup>80</sup> Mine protester cleared of 'spurious charge', Ulster Herald Newspaper, 21 October 2021.

<sup>81</sup> From a subject access request on file with CAJ, there is no police reference number but the police log is 13/07/20.

<sup>82</sup> From a subject access request on file with CAJ, police reference number CC2021070700850, police log 07.07.2021.



by the police and said he did not give permission for the protectors to be on the land.

A subject access request of the PSNI's log in relation to one protector states that the protector was "behaving in an intimidating manner and causing an obstruction. Police attended and spoke to [the protector] stating that [they were] currently committing the offence of Aggravated Trespass as [they] had entered land which [they] had no permission to be on. Police informed [the protector] that [they] had also obstructed the work of [people] and intimidated [people] by means of using [a] mobile phone to video them."<sup>83</sup>

It is unclear from the subject access request of the PSNI log how the PSNI knew that the protector did not have permission to be on the land.

One of the protectors pursued a complaint to the Police Ombudsman for Northern Ireland. On 6 May 2022, the Ombudsman's office concluded the investigation, finding that there was an active civil case regarding the ownership of the land in question, and that the protector was arrested using the correct legislation and that there were reasonable grounds to justify the arrest on the part of the officer, therefore no misconduct was found.<sup>84</sup> The Ombudsman report states, "You stated that you were wrongfully arrested and that you had permission from the landowner to be present. There is a civil case in progress which disputes the fact that the person you obtained permission from was the current landowner. Police officers attending, were informed that your presence was interfering with work which was being carried out by [people] and sub-contractors, as you were video recording them. You were arrested for 'aggravated trespass'.<sup>85</sup>

- h. In 2021, a protector alleges that they were contacted by the police who informed them that allegations of harassment had been made against them. The protector alleges that they met the person claiming harassment twice (the first meeting happening over a year preceding the allegation of harassment, and the second meeting happening five months prior to the allegation) and that both times the interactions were brief, cordial, and public with many witnesses. The protector was alleged to have engaged in verbal abuse, and to have blocked the exit to a public event preventing the complainant from leaving the room. The incident was allegedly reported to the police at the beginning of September 2020, but the protector was not contacted by the PSNI until mid-March 2021. Two days prior, the protector's

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<sup>83</sup> From a subject access request on file with CAJ, police log 12.01.2022

<sup>84</sup> From a copy of the Ombudsman's letter to the Protector on file with CAJ.

<sup>85</sup> See above.



complaint against the goldmining company to the Advertising Standards Authority had been upheld and published.<sup>86</sup> The protector was allegedly asked by the police to voluntarily give a statement at the police station and was interviewed. The protector had to wait over 18 months for the PPS to decide not to prosecute.<sup>87</sup>

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<sup>86</sup> <https://www.asa.org.uk/rulings/dalradian-gold-ltd-a20-1054516-dalradian-gold-ltd.html>

<sup>87</sup> The PPS letter sent to the protector is on file with CAJ, PPS Case reference 1072800, and PSNI reference C21014506.

## Conclusions

### **Allegations of failures to adequately investigate offences.**

While we are unable to independently verify every allegation, protectors have told us that in instances where they have been victims of crime that has been reported to the PSNI, the police have not adequately investigated the offences. The protectors also allege a failure to collect evidence, and a lack of timely communication regarding the status of their reported allegations.

Article 2 of the PSNI Code of Ethics sets out obligations for police investigations which stipulates “upon reasonable suspicion of an actual or possible offence or crime... [an investigation] shall be conducted in a prompt, thorough, impartial and careful manner so as to ensure accountability and responsibility in accordance with the law.”<sup>88</sup> The Code of Ethics also provides that victims be updated on the progress of investigations.

If the allegations of protectors set out in this report were substantiated, the lack of communication with victims regarding the status of the investigations (and failure to collect evidence) in some instances (but not others) and by contrast the prompt investigation of allegations of harassment when made against protectors, would not be compatible with the PSNI Code of Ethics and may indicate a pattern of differential policing between protectors and those in support of goldmining.

The reported failure to adequately investigate the threats to kill and hit and run incidents would be particularly concerning given the severity of the incidents and the positive obligations arising under Article 2 ECHR (right to life). If, after informing the protectors about threats to their lives, the police did not investigate the potential offence(s), this may be considered a breach of the PSNI Code of Ethics.

### **Deterring participation in environmental protests**

While CAJ is unable to verify the accuracy of the allegations in this section, if they are substantiated the complaints of threats, disproportionate use of powers, and attempts to infiltrate the protest movement would be very concerning.

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<sup>88</sup> <https://www.legislation.gov.uk/nisr/2016/41/schedule/part/2/made>

The allegations would raise serious concerns about the impartiality and proportionality of the policing of protectors involved in the anti-goldmining campaign and hence compliance with the PSNI Code of Ethics. The impact of such actions could deter protectors from taking part in lawful expressive protest activities, and hence conflict with the positive obligations of states to facilitate and protect the exercise of the right to protest.

In relation to the use of informants, the Code of Practice issued under the Regulation of Investigatory Powers Act 2000 (RIPA) provides that the use of informants must be necessary and proportionate and compatible with rights under the ECHR. The proportionality tests under the ECHR imply that such powers only be used in relation to serious crime. Guidance from the National Police Chief's Council (NPCC) specifically on the use of informants ('CHIS') in the context of protests stresses that "RIPA is clear that CHIS-related activity in relation to lawful protest alone, will never be legal, necessary or proportionate."

If the allegations of attempted infiltration were substantiated, it is likely that attempting to recruit a CHIS to obtain, provide access to or disclose information about lawful protest activity would be a breach of the necessity and proportionality test in the ECHR and conflict with the RIPA Code of Practice. Additionally, the allegation that an officer falsely claimed to a protector that other people in the campaign were informants (or, alternatively, disclosed the identity of an informant), if substantiated, would conflict with ECHR rights.

### **Criminalisation of protests**

Protectors have reported concerns that criminal sanctions are used against them disproportionately while engaged in peaceful protest, creating a chill factor for activists who are opposed to the goldmine.

While CAJ is unable to verify the accuracy of the allegations in this section, if substantiated, the complaints of criminalisation of protest activity, and disproportionate use of policing and criminal justice powers against protectors raises questions of proportionality and impartiality in the policing response. This is particularly the case when viewed thematically, as it may be indicative of a pattern of differential policing.

### **Conclusion**

The above patterns that have emerged in this report from the testimony of the protectors do give cause for concern regarding practices in the policing of environmental protests in the Sperrin mountains, in particular regarding the proportionality of the policing response and questions of differential treatment.

In this context we would urge the Northern Ireland Policing Board or the Police Ombudsman for Northern Ireland to give consideration to a thematic review into the policing of the groups and individuals opposed to goldmining in the Sperrin Mountains, including reviewing the questions of differential treatment and the proportionality of criminal sanctions for protectors.

It is also recommended that the PSNI ensure that officers who are engaged in policing the anti-goldmine campaign receive adequate training on the human rights framework regarding rights to protest that arise in these circumstances.

#### **August 2024**

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