

NICCY Response to PSNI EQIA on the use of Spit and Bite Guards May 2021

Introduction

The Commissioner for Children and Young People (NICCY) was created in accordance with ‘The Commissioner for Children and Young People (Northern Ireland) Order’ (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), the Commissioner has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons.

The Commissioner’s remit includes children and young people up to 18 years old, or 21 years old, if the young person is disabled or is care experienced. In carrying out her functions, the Commissioner’s paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

Children’s Rights

NICCY appreciates that there are perceived complexities when reconciling the rights of children and young people with their welfare and best interests. We recommend that the following articles of the UNCRC are effectively incorporated as underlying principles when considering the EQIA on the use of Spit and Bite guards, particularly Articles 3 (this is already a requirement as outlined in S53 of the Justice NI Order, 2002)¹.

- **Article 2:** Children shall not be discriminated against and shall have equal access to all articles in the UNCRC.
- **Article 3:** All decisions taken which affect children's lives should be taken in the child's best interests.
- **Article 6:** All children have the right to life and to the fullest level of development.
- **Article 12:** Children have the right to have their voices heard in all matters concerning them.

¹ [S. 53\(3\)](#) substituted (25.7.2015) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), [ss. 98](#), [106\(1\)\(c\)](#)

- **Article 19:** Children have the right to be protected against all forms of violence, abuse, maltreatment or exploitation.
- **Article 36:** Children should be protected from all other forms of exploitation prejudicial to the welfare of the child.
- **Article 37:** Children should not be subject to cruel, inhuman or degrading treatment or punishment.

In 2016, when the UN Committee on the Rights of the Child examined the UK on how well it is meeting its children's rights obligations, it recommended that the UK Government prohibit the police using any harmful devices on children.² Specifically the Committee was concerned about:

(a) The use by the police of Tasers and, in the case of Northern Ireland, attenuating energy projectiles against children in the four devolved administrations.

(c) The use of physical restraint on children to maintain good order and discipline in young offenders' institutions and of pain-inducing techniques on children in institutional settings in England, Wales and Scotland, and the lack of a comprehensive review of the use of restraint in institutional settings in Northern Ireland;

In 2008 NICCY raised serious concerns regarding the decision-making process for the introduction of Tasers into operational use and how the implementation process raised serious concerns for the rights of children and young people. Similarities can be drawn regarding raised concerns with the temporary introduction of Spit and Bite Guards. For example; the introduction of Tasers happened before a full Equality Impact Assessment had been completed, currently over 3,000 PSNI officers have been already issued with Spit and Bite Guards, albeit on a 'temporary' basis. In 2008, the Commissioner stated: "I have as yet not seen the safeguards by way of operational guidelines that will make sure children and young people will be protected from having Tasers used against them."³ Similarly, the PSNI EQIA in question has a section regarding training and after care, however it cannot evidence the effectiveness in safeguarding children and young people who been subjected to the use of spit and bite guards, particularly around the lasting effects of the trauma they would experience.

In November 2020, the Commissioner published the second 'Statement of Children's Rights in Northern Ireland. The report highlighted how young people continue to believe that they are discriminated against when they are stopped and searched or questioned and are treated with

² CRC/C/GBR/CO/5 (2016) Para 39

³ [Commissioner Concerned Over Introduction of Tasers \(niccy.org\)](#) 2008

disrespect, which may exacerbate an already tense situation. Whilst PSNI have a clear policy commitment to children's rights, this means nothing if when they engage with young people in routine operations, it has the opposite effect. It is these experiences that shape the views of young people, and will impact on their confidence in the PSNI, if they are victims of crime in the future. SOCRNI recognises that the PSNI accepts its duty to take into account the best interests of the child however this has not translated into implementation with no evidence that there has been sufficient regard to the vulnerability of young people⁴.

Concerns on the use of Spit and Bite Guards on children under the age of 18

Children cannot be treated the same as adults. It is widely recognised that they must be treated differently because of their distinct vulnerabilities, evolving capacities and greater developmental needs. Recent developments in neuroscience have also identified that the brain development and specifically the frontal lobes (the area of the brain that helps regulate decision-making and the control of impulses that underpin behaviour) are still developing into a human's 20s. This will affect a child's ability to cope in a stressful situation with the police. Using a spit-hood risks not only heightens the fight or flight response but could also risks subsequent psychological damage. This is compounded by the fact that children who come into contact with the police are some of the most vulnerable in society - many have experienced abuse or violence, are victims of criminal exploitation, and have special educational needs (SEN), communication needs or serious mental health conditions⁵

NICCY has welcomed the PSNI's instructions around preventing the use of spit and bite guards, "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".⁶ However, we understand there is still risk for PSNI Officers to potentially wrongly identify a young person as over 18, when circumstances do not allow officers to ascertain identification and age. Therefore, **NICCY recommends that the statement include, 'Where officers or staff are aware or believe 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 referred to the training Student Officers, Local Neighbourhood Policing teams as well as Public Protection Units received on Trauma-Informed Practice incorporating Adverse Childhood Experiences (ACES).⁷ Furthermore, The PSNI confirmed, 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

⁴ NICCY (2020) [niccy-socrni-2-main-report-web-nov-20.pdf](#) Page 68

⁵ CRAE (2019) [Children's rights and policing: Spit-hoods and children's rights](#)

⁶ PSNI EQIA (2021) Spit and Bite Guards

⁷ PSNI EQIA (2021) Use of Spit and Bite Guards Pg. 33

the ages of 11 and 24. Given the few incidents that involve children and young people under the age of 18, it is crucial that any child or young person who have had a spit and bite guards used on them is automatically referred to a professional for assessment, such as the Duty Social Worker. It should be Duty Social Worker who recommends referrals, and mandatory follow ups should be made with the young person to ensure their safety and wellbeing.

As of May 2021, PSNI has confirmed there has been 9 instances of the use of spit and bite guards on children and young people under the age of 18.⁸ NICCY has considered the initial concerns outlined in the Human Rights Report with regards to the impact of Spit and Bite Guards on the mental health and well-being of vulnerable people. This alongside the absence of any evidence regarding the necessity of their use and mindful of the PSNI's statutory obligation to have the best interests of the child as a primary consideration (Justice (NI) Act, 2002) all lead to the inescapable conclusion that **this equipment should never be applied to children and young people.**

Conclusion

NICCY welcomes the opportunity to provide advice on PSNI EQIA on the use of Spite and Bite Guards and urges the PSNI to consideration the recommendations made in this submission, which is provided within her statutory role under Article 7(4) of 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003). NICCY looks forward to continuing to engage in these developments to ensure effective implementation within a robust child rights framework.

⁸ NICCY /PSNI Corr Apr/May2021