

**A REVIEW OF
PSNI'S USE OF
SPIT AND BITE
GUARDS BY THE
NI POLICING
BOARD'S HUMAN
RIGHTS ADVISOR**

FEBRUARY 2022

CONTENTS

EXECUTIVE SUMMARY	2
RECOMMENDATIONS – STRATEGIC AND OPERATIONAL	4
CHAPTER 1 - INTRODUCTION	9
CHAPTER 2 - EVIDENCE	13
• The Use of Spit and Bite Guards	13
• Welfare of PSNI Officers and Staff	14
• Medical Considerations	16
• The Risks of Spit and Bite Guards on Detainees	22
• Children and Young People	25
• Mental Health and Disability	28
• Gender and Religious Background	29
CHAPTER 3 - HUMAN RIGHTS ASSESSMENT	33
• Human Rights Considerations	34
• Vulnerable Suspects	40
• Use of Force by Police Officers	42
CHAPTER 4 - SAFEGUARDS AND PROTECTIONS	49
• Training and Guidance	49
• Use of Force	53
• Alternatives to Spit and Bite Guards	55
• De-escalation, Disengagement and Warnings	56
• Equipment, Vehicles and Custody	60
• Children and Young People	62
• Mental Health, Disability, Drug and Alcohol Intoxication	65
• Continued Monitoring and Oversight	68
ANNEX A	69

EXECUTIVE SUMMARY

The Policing Board requested that the Independent Human Rights Advisor conduct a Human Rights based review on the use of Spit and Bite Guards which will allow the Board to come to an evidence-based position on their use in advance of the Chief Constable making his decision on their permanent introduction into the PSNI. This Report provides detailed and comprehensive evidence of the Human Rights implications of using Spit and Bite Guards. The various arguments are set out and evidenced and the potential 'unlawful' use of Spit and Bite Guards is highlighted. The Human Rights Advisor also helpfully identifies what the PSNI needs to do in order to avoid using Spit and Bite Guards in an unlawful way.

In this Report a number of key areas are examined with analysis and research provided. The first area provides the background to PSNI's temporary introduction of Spit and Bite Guards in March 2020 in response to the COVID-19 pandemic along with an overview of work carried out by the Human Rights Advisor and Board officials. Since then, a number of significant documents have been published. Firstly, in November 2020, the Board published its Thematic Review of PSNI's Response to COVID-19¹ within which it explores the use of Spit and Bite Guards and makes a recommendation. In May 2021 the PSNI launched its Equality Impact Assessment² into their use and in October 2021, the Police Ombudsman, having reviewed Body Worn Video (BWV) of a sample of Spit and Bite Guard deployments, published her Report³. This Human Rights Report considers the key findings of all of these documents, while also exploring a wide range of evidence nationally and internationally, hearing from external organisations and viewing BWV of deployments, in order to assist the Board in coming to an agreed position on the permanent use of Spit and Bite Guards in advance of the Chief Constable's decision in March 2022.

An important element of this analysis is the welfare of officers and staff, the incidence of spitting and biting and the duty placed on the Chief Constable to ensure a safe working environment for officers and staff. The report explores the limited medical evidence available relating to protection provided when using a Guard, in respect of the transmission of COVID-19 and other diseases and infections. It also considers the medical evidence and risks associated with using the Guards on detainees in respect of vulnerabilities associated with age, mental health and disability.

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

2 <https://www.psnipolice.uk/globalassets/inside-the-psni/our-policies-and-procedures/equality-diversity--good-relations/documents/stage-1-4-report-draft-amendments-v5-final-003-002-002.pdf>

3 <https://www.policeombudsman.org/PONI/files/93/93f9e0e4-2b03-4162-9923-7a1f56589527.pdf>

The Advisor met with the Northern Ireland Human Rights Commission (NIHRC), the Northern Ireland Commissioner for Children and Young People (NICCY) as well as other key stakeholders representing the rights and welfare of children. All recommend that Spit and Bite Guards should not be used on those aged 18 years or under. It is worth noting that the National Police Chief Council (NPCC) does not support this view and does not set an age restriction for their use. This is explored in detail in Chapter Two of the Report.

The Human Rights Advisor explores in depth the human rights implications of using a Spit and Bite Guard. It is accepted that the use of the Guards is a use of force which engages in a direct and fundamental way the rights protected by the European Convention of Human Rights (ECHR), specifically Article 2, Article 3 and Article 14. This section of the Report considers these Articles and the proportionately, lawfulness, the Northern Ireland context, de-escalation and alternatives to Spit and Bite Guards.

The Report considers the safeguards and protections necessary if Spit and Bite Guards are introduced and it sets out in detail what is required of the service in relation to training and Guidance. It considers the current online training package for officers and makes recommendations for this to be updated. The Human Rights Advisor makes several recommendations in respect of the current PSNI guidance and these are set out as operational recommendations if the PSNI decide to implement Spit and Bite Guards permanently. The report also addresses other safeguard options which the Board may wish to consider if the Guards are introduced permanently. These include: de-escalation, disengagement and warnings; vehicles and custody settings; and identification of safeguards for vulnerabilities such as age, mental health, disability, drug and alcohol intoxication. The Report also sets out how the Board can provide continued monitoring and oversight of their use.

The Advisor makes twenty one recommendations for PSNI's consideration, set out as Strategic or Operational. If the Chief Constable makes the decision to introduce Spit and Bite Guards, the Board encourages the PSNI to accept the recommendations to allow the Advisor, working with Board staff, to provide the appropriate independent scrutiny across these areas over the coming year.

The Advisor would like to extend his thanks to the following organisations who met with and provided their views to the Board, without whom this report would not have been possible: the Northern Ireland Police Federation, Commissioner for Children and Young People, Children's Law Centre, Amnesty International, Northern Ireland Human Rights Commission and Include Youth.

RECOMMENDATIONS

STRATEGIC RECOMMENDATIONS

GUIDANCE

RECOMMENDATION 1

(GO TO PAGE 22)

The lack of sound medical evidence that demonstrates the effectiveness of Spit and Bite Guards in preventing the transmission of COVID-19 or any other infection means that PSNI should make it clear to officers and the public that the use of Spit and Bite Guards on medical grounds alone is not justified.

CHILDREN

RECOMMENDATION 3

(GO TO PAGE 41)

It is difficult to see how the use of a Spit and Bite Guard will ever be in the interests of a child and therefore the Guidance should be amended to set out the circumstances where this might, possibly, be true.

RECOMMENDATION 15

(GO TO PAGE 64)

If an officer is aware the child is under 18 then the Guard should not be used under any circumstances. [Alternatively, where it is possible, only following authorisation from a Superintendent.] If the Guard is used on a child, then the incident of this should be notified to the Police Ombudsman who should review the Body Worn Video.

MENTAL HEALTH/VULNERABILITY

RECOMMENDATION 19

(GO TO PAGE 67)

Where an officer knows that someone has a mental health condition that could be exacerbated by the use of Spit and Bite Guards, particularly self-harm or suicide, then the Guard should not be used.

RECOMMENDATION 21

(GO TO PAGE 68)

The Policing Board should consult with the Police Ombudsman, HMICFRS, CJINI and other inspection bodies on how best to implement this recommendation:

- Every use of a Spit and Bite Guard on a child should be reviewed;
- Every use of a Spit and Bite Guard on a person already in a police vehicle or police custody should be reviewed;
- Any use of a Spit and Bite Guard that occurs after a person is restrained and where officers can temporarily remove themselves to a safe distance should be reviewed;
- The Human Rights Advisor should dip sample the Body Worn Videos of the use of Spit and Bite Guards over the second quarter of 2022 and report on his findings in October 2022;
- An independent investigation and report on the reasons why members of one religious group are more likely to be subject to a Spit and Bite Guard than another; and
- A complete review of the use of Spit and Bite Guards by PSNI should be conducted by the end of 2022.

OPERATIONAL RECOMMENDATIONS

GUIDANCE

RECOMMENDATION 4

(GO TO PAGE 48)

A more detailed assessment of the law and the Human Rights requirements in relation to the use of Spit and Bite Guards should be set out in the Guidance and provided in the training of officers for their use and this should include the requirement to consider alternatives.

RECOMMENDATION 5

(GO TO PAGE 51)

The wording of the Guidance should be strengthened to deter any officer from using a Guard if they have not been recently trained to do so.

RECOMMENDATION 6

(GO TO PAGE 52)

The Guidance should be strengthened to recognise the dangers illustrated by the Sussex case in regard to the use of PAVA (pepper spray) and Spit and Bite Guards.

RECOMMENDATION 7

(GO TO PAGE 52)

The Guidance needs to reinforce the importance of the Guard being single-use. This should also be reflected in the training videos and face to face learning.

RECOMMENDATION 10

(GO TO PAGE 54)

An individual who has spat or bitten, but has since calmed down or is now unconscious, should not have the Guard reapplied and the Guidance should reflect this. The Guidance should also provide more detail on how to reassess the continuing need for the Guard and how long a Guard should typically stay on for.

RECOMMENDATION 11

(GO TO PAGE 56)

Where the Guidance refers to putting on gloves and Personal Protective Equipment (PPE) more emphasis needs to put on this as the first action to take if someone is spitting or biting, rather than using force and applying a Guard. It is recommended that the Guidance and training reflects this and gives officers the practical training they need in moving away from the threat and putting on PPE. The Police Ombudsman also recommended that police circulate a reminder to all relevant officers staff to remind them of their responsibility to wear PPE and its importance.

RECOMMENDATION 13

(GO TO PAGE 61)

The Guidance should be reworded to reflect the fact that officers must give a prior warning stating that if the individual does not stop spitting, then they will apply the Guard.

TRAINING

RECOMMENDATION 8

(GO TO PAGE 52)

The previous training video for officers shows an individual actor subject to a Spit and Bite Guard who appears to be completely compliant. As a Spit and Bite Guard is a use of force and should be only be applied when 'absolutely necessary' the person to whom the Spit and Bite Guard is being applied is very likely to be actively resisting and/or being aggressive towards police. The training now appears to be unrealistic and needs updated.

RECOMMENDATION 9

(GO TO PAGE 52)

The training that officers receive on Spit and Bite Guards should be more comprehensive and repeated at least, annually. It should be more extensive than the current training available and the implications of the use of force for Human Rights should be at the centre of such training.

RECOMMENDATION 14

(GO TO PAGE 61)

The training and Guidance should give better Guidance to officers on how to effectively communicate to de-escalate the situation and to disengage safely. This training on de-escalation and disengagement should reflect the examples from the other forces set out above, showing officers how to actively respond to a situation without using force. It is imperative that this training is detailed, in person and parts are delivered by those who are independent from PSNI, are professionally trained in social work or related fields and play a vital role in de-escalating situations involving complex mental health crises. If de-escalation or disengagement is effectively used, this is the best way to protect the individuals from unnecessary uses of force and also protecting the officers.

EQUIPMENT

RECOMMENDATION 12

(GO TO PAGE 61)

Neither the Human Rights Advisor nor the Policing Board have the expertise to develop detailed proposals for the vehicles or alternative equipment that might be needed to keep both officers safe without the use of Spit and Bite Guards. The PSNI should therefore report on the options for safe travel for the some 0.6% of suspects that have currently to be transported wearing a Spit and Bite Guard.

RECOMMENDATION 16

(GO TO PAGE 64)

The PSNI should amend their use of force training package and general training on the use of force on children, with specific reference to the use of Spit and Bite Guards, which should include:

- An explanation of children's rights;
- A simple explanation of the issues of the development of the child and adolescent brain;
- How children are likely to react differently to situations than an adult; and
- A detailed focus on the heightened risks of Spit and Bite Guard use on children and young people.

CHILDREN

RECOMMENDATION 17

(GO TO PAGE 65)

Any new Guidance should be subject to consultation with children themselves in addition to those organisations that act as advocates for them.

MENTAL HEALTH / VULNERABILITY

RECOMMENDATION 18

(GO TO PAGE 66)

The Guidance needs to be strengthened to include other medical factors, including autism and sensory issues. It also needs to help officers to deal with people who not only have such disabilities, but also those who have taken drugs or alcohol and are unable to act rationally. The training should also cover these issues and provide officers with detailed Guidance on how to recognise such issues and problems that are not always obvious.

GOVERNANCE

RECOMMENDATION 2

(GO TO PAGE 32)

The PSNI should investigate why the statistics in relation to religion appear to demonstrate prima facie indirect discrimination contrary to domestic equality law and in relation to Article 14 of the European Convention of Human Rights.

RECOMMENDATION 20

(GO TO PAGE 68)

As the PSNI's Equality Impact Assessment states that all statistics on all uses of force are shared with the Policing Board bi-annually and statistics on the use of Spit and Bite Guards weekly, this should continue.

CHAPTER 1

INTRODUCTION

The Northern Ireland Policing Board's Human Rights Annual Report for 2016-17 contained two recommendations in relation to PSNI's use of Spit and Bite Guards:

"In the event that the PSNI considers introducing Spit Guards or hoods for use by officers it should first report to the Performance Committee outlining the need and the capability gap to be filled; whether there is potential for death or injury; a tactical and medical needs assessment; and an equality impact assessment."

In the event that the PSNI intends to issue Spit Guards or hoods to officers it should report to the Performance Committee on the Guidance in place; training developed (for all officers and civilian detention officers); the monitoring framework for the use of hoods; and the commitment to report on the use of hoods to the Board by the electronic use of force monitoring form."

The Chief Constable wrote to the Policing Board in July 2019 informing them of his intention to introduce Spit and Bite Guards. In advance of the Chief Constable's decision and following advice from the Human Rights Advisor, the Board wrote to PSNI, setting out their concerns over the use of the Guards. In particular the Board has been concerned about their use on vulnerable people and have routinely requested evidence of PSNI's consideration of any alternatives to the Spit and Bite Guards and evidence for their necessity as a use of force tactic in line with Human Rights. The PSNI then introduced Spit and Bite Guards to officers temporarily in March 2020 at the beginning of the pandemic without complying with the Board's previous Human Rights recommendations although, at the time, both the PSNI and Members of the Board assumed that Spit and Bite Guards were necessary to protect officers from the transmission of COVID-19.

In November 2020 the Board published the "Thematic Review of the Policing Response to COVID-19". Within this Report the Board agreed the following recommendation in relation to Spit and Bite Guards:

'In the light of the fact that the deployment of Spit and Bite Guards was triggered by the COVID-19 emergency, 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.

The PSNI should:

- Provide the Board with further scientific and professional evidence, including from police forces in other jurisdictions, to measure the extent to which Spit and Bite Guards provide protection for police officers from COVID-19 transmission compared with that provided by the PPE supplied to officers;
- Complete a PSNI public consultation exercise on the deployment of Spit and Bite Guards in line with Section 75 of the Northern Ireland Act 1998, and should include consideration of the criteria and Guidance for their use; and
- Once these actions have been completed submit the evidence to the Board so that the Board can give its view to the Chief Constable on their use.

The Board should:

- Taking into account the findings of the Office of the Ombudsman's analysis, initiate an independent human rights-based assessment review to analyse each use of Spit and Bite Guards since March 2020, taking into account Article 3 of the ECHR and the other human rights treaties ratified by the UK.'

Since then, the PSNI has expanded the numbers of front line officers who have access to Spit and Bite Guards. The Chief Constable is expected to review their use and decide whether they should be permanently available to front line officers in March 2022. This Report is designed to inform his decision and, if their use continues, to suggest a number of operational recommendations, safeguards, reviews, and restrictions.

Update from PSNI at the end of 2021

The recommendation from the COVID-19 Report outlined above, recommended that the PSNI should provide the Board with further information that includes:

- An Evidence Report;
- A report on the findings of the public consultation process; and
- A completed Equality Impact Assessment.

This information was presented by PSNI at the Board's December 2021 Performance Committee meeting.

The final part of the Recommendation was to take into consideration the findings of the Police Ombudsman's ongoing reviews of PSNI's Use of Spit and Bite Guards. Prior to their temporary introduction in PSNI, it was agreed that the Ombudsman would be notified of all deployments and all BWV would be reviewed. The Ombudsman completed her review and made this final Report public on 7th October 2021⁴ at which time the Board met to consider and discuss with her its findings. A summary of the Report's findings can be found in the Safeguarding and Protections section of this report (Chapter Four).

4 <https://www.policeombudsman.org/PONI/files/93/93f9e0e4-2b03-4162-9923-7a1f56589527.pdf>

The PSNI has undertaken an Equality Impact Assessment (EQIA)⁵ on the use of Spit and Bite Guards. This identified that their use (covering 16 March 2020 - 17 February 2021) has an adverse impact on some groups more than others. Men, young people, people with a disability and Catholics have been adversely impacted. An assessment of spitting and biting incidents from PSNI data and benchmarking with other UK police forces suggests that, apart from the numbers relating to community background, there is a similar pattern nationally.

The general response to the EQIA from interested organisations notes that the EQIA itself identifies major adverse impacts from the use of the Spit and Bite Guards, particularly on children and young people and people with disabilities. It also notes that there is also a significant differential on the grounds of community background, for which no explanation has so far been provided. Many of these organisations suggest that the PSNI should implement the recommendation of the Board's COVID-19 report and discontinue the use of Spit and Bite Guards.

During the PSNI's EQIA public consultation, a number of agencies⁶ responded to the question of the continued use of Spit and Bite Guards.

The views and concerns of the partners PSNI have engaged with to date are summarised as follows:

- There is a need to ensure that training is provided on the specific needs of people with disabilities (particularly sensory disabilities);
- There is concern about the impact of using Spit and Bite Guards on children and young people;
- In situations where the alternative to a Spit and Bite Guard is the use of non armed or physical tactics, then their use may be preferable;
- More clarity was requested of the PSNI on the types of situations in which Spit and Bite Guards would be used;
- The possibility of differential impact on women, children and young people, men, people from minority ethnic communities, people with disabilities (especially people with poor mental health) were raised by consultees;
- Significant concern was expressed about Spit and Bite Guards use where negotiation or other alternative forms of resolution might be used;
- Concerns were expressed that the use of Spit and Bite Guards could be expanded in future as it had been in England and Wales to include all police officers and in more situations;

5 <https://www.psnipolice.uk/globalassets/inside-the-psni/our-policies-and-procedures/equality-diversity--good-relations/documents/stage-1-4-report-draft-amendments-v5-final-003-002-002.pdf>

6 Partner agencies listed by PSNI included; The Northern Ireland Human Rights Commission, Amnesty International, The Health and Social Care Board, The Children's Law Centre, The Education Authority for Northern Ireland and The Children's Commissioner for Northern Ireland.

- The effectiveness of Spit and Bite Guards in reducing the transmission of coronavirus or other airborne viruses was questioned; and
- The risks of using any device that restricts breathing was raised.

There was also commentary regarding the Guidance and training which PSNI has now implemented; specifically, offering clear instructions on removing the Guard in an emergency, including additional commentary around cultural and religious factors and referencing subjects who wear hearing devices. Concern was expressed that Spit and Bite Guards had been introduced before the consultation took place and the consultation did not commence until a year after that introduction.⁷

Many of these issues are considered in more detail within this Report and have informed the analysis and subsequent recommendations.

The Human Rights Advisor and Board officials viewed a small randomly selected sample of BWV of Spit and Bite Guard deployments in order to assist the Advisor in his considerations. All officers are required to use BWV in the deployment of Spit and Bite Guards. Further detail is set out in Annex A.

⁷ <https://www.psni.police.uk/globalassets/inside-the-psni/our-policies-and-procedures/equality-diversity--good-relations/documents/stage-1-4-report-draft-amendments-v5-final-003-002-002.pdf>

CHAPTER 2

EVIDENCE

Police officers should not be subjected to spitting and biting. The Human Rights Advisor and Board staff have viewed BWVs showing police officers being spat at or bitten and have spoken to other officers who have had to put up with this behaviour. Such action is particularly insulting, and officers are obviously anxious about disease transmission regardless of any objective assessment of the risks involved. Society expects officers to be out on the streets in all weathers and 24/7 and to respond to difficult situations involving violent and out of control individuals. Society also expects officers to protect, not just the victims and witnesses, but suspects. The officers themselves deserve protection. However, it is also clear from the evidence that most of the suspects subjected to Spit and Bite Guards are not making rational decisions and are rarely in real control of their actions – whether this is as a result of mental health issues, temporary rage, or being disconnected from reality or as a result of drink or drugs. This evidence does not mean their actions are any less unpleasant for officers, but it does mean that methods of further restraint may not be justified or may not be likely to reduce the offending behaviour.

THE USE OF SPIT AND BITE GUARDS

52 of 58 police services in the British Isles use Spit and Bite Guards, of which two only use the Guard in custody and a further three both in custody and in vehicles. There are six law enforcement agencies who do not use Spit and Bite Guards; including the National Crime Agency (NCA), Royal Military Police (RMP), and Civil Nuclear Constabulary (CNC). Use in the rest of the UK has extended over recent years from a largely custody-based environment to routine use by police officers in frontline policing roles. Through the National Police Chiefs Council (NPCC) and specifically the Self-Defence, Arrest and Restraint Group (SDAR), it has been identified that, nationally, incidents of spitting and biting have been on the increase over the last number of years. From 1 January 2020 to 26 November 2021 there has been a total number of 281 officers reporting spitting and 134 officers reporting biting incidents in Northern Ireland. Of the total number of reports, 25 perpetrators of incidents of spitting/biting were under the age of 18 years of age.

From the PSNI's introduction of Spit and Bite Guards in 16 March 2020 to 18 November 2021 there have been 202 deployments of Spit and Bite Guards by PSNI officers. This is balanced against 32,926 arrests and equates to 0.6% of arrests in the same period. Of the 202 deployments they were used on 25 occasions on people aged 18 and under. Of the 202 occurrences, 175 uses have been recorded as male and 27 recorded as female. 200 of 202 uses have been on white individuals with two uses on black individuals. 178 of the incidents have involved alcohol or drugs as a factor. Mental health has been recorded 86 times as either a sole factor or in combination with alcohol or drugs. 13 uses have been in custody suites, 142 uses were categorised as required to prevent an offence and every use was recorded as required to protect self, another person or an officer.

With regards to the length of time that a Spit and Bite Guard was kept on the detainee, this has been recorded for 151 of the 202 occurrences. In the majority of incidents the Spit and Bite Guard was used for more than 60 minutes. Of the 25 uses on those aged 18 years or under, the length of time was recorded on 21 occasions, with two incidents lasting over 60 minutes and three incidents lasting over 120 minutes. The PSNI EQIA found that that the highest number of reports relate to incidents in a police vehicle or as the individual was being placed in the vehicle or extracted from the vehicle. The next most recorded uses took place on a public street or road or a custody suite, with a small number applied in a hospital, private residence, hostel, public building or private vehicle.

In comparison with other UK Services; during a one year period PSNI (6,917 officers) used Spit and Bite Guards 101 times; West Midlands (6,516) used the Guards 343 times; West Yorkshire Police (5,342 officers) recorded 307 uses of a Guard and Merseyside Police (3,629 officers) recorded 225 instances. From the total deployments of Spit and Bite Guards nationally in England and Wales in 2020, 84% of these were used by officers to prevent injury to themselves (100% of uses in PSNI). The demographics provided by PSNI in their EQIA show that PSNI's use is following national trends of higher deployments on young males.

WELFARE OF PSNI OFFICERS AND STAFF

PSNI have reported that in officers' 'injury on duty' reports, there have been 610 who reported spitting/biting incidents from 1 March 2020 to 16 November 2021. There were 38 reports where the subject was deemed as 'COVID-19 suspicious' and 139 instances where the police staff may have absorbed saliva (i.e. through eyes or mouth, etc.). Biting and spitting, the threat of spitting, and all the other abuses and assaults carried out on PSNI officers by members of the public are egregious acts, particularly in the context of the current health emergency. The issue of spitting and biting has highlighted the vulnerability of PSNI officers and staff as key frontline workers during COVID-19 and stressed the importance of adequate personal protective equipment (PPE) to ensure all officers are protected, particularly, whilst managing difficult public order issues.

PSNI has a statutory obligation to ensure the establishment of safe systems of work to protect officers, staff and others. There is a legislative requirement on PSNI as an employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of its employees (Health & Safety at Work Order (NI) 1978).

In addition to protections under the Safety, Health and Welfare at Work Order, positive Human Rights obligations extend to the rights of PSNI officers who have the right to be protected in dangerous situations and to have access to adequate equipment to discharge their duties (Articles 2, 3 and 8). PSNI officers are rights holders who have the right to life, to the protection of their health, to dignity at work and to fair and just working conditions.⁸ The “Statement of Principles” issued in March 2020 by the Council of Europe’s European Committee for the Prevention of Torture relating to the treatment of persons deprived of their liberty in the context of the COVID-19 pandemic recognised the importance of professional support, training, and adequate protection to ensure the health and safety of staff in all places of detention including PSNI stations.⁹

Police services nationally have been under pressure to strengthen protections for frontline officers, including a full rollout of Spit and Bite Guards nationally. The Police Federation UK is running a campaign called ‘Protect the Protectors’.¹⁰ It calls for changes to legislation, tougher sentences, access to training and equipment, improved data and increased support. The Police Federation for Northern Ireland have been advocating for the introduction of Spit and Bite Guards for many years, and have said that the failure to immediately introduce the Guards in Northern Ireland is inexcusable and places officers at increased risk during the COVID-19 crisis.¹¹ In response to the Board’s Thematic Review of the Policing Response to Covid, the Police Federation for Northern Ireland stated that the report provided no viable alternative that would reduce the risk to officers from this type of assault. The Chair of the Police Federation for Northern Ireland has urged both the Policing Board and the PSNI to focus on the rights of police officers and members of the public who are the victims of these assaults and continue the use of Spit and Bite Guards.¹² This was further reiterated in the Human Rights Advisor’s recent engagement with the Federation as part of this Report’s research. It is hoped that this Report provides some alternatives and is based on both the evidence available and attempts to understand how Spit and Bite Guards are used in practice.

PSNI’s EQIA noted that a large amount of spitting and/or biting incidents in 2020 were against Local Policing Team officers or Neighbourhood Police Team officers (more than 89%) who had not been previously equipped with Spit and Bite Guards. These frontline officers deal with a wide range of incidents as first responders on a daily basis.

8 See the Council of Europe’s Revised European Social Charter 1996 including Articles 2, 3, 11 and 26.

9 Committee for Prevention Torture, 2020. Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic. Council of Europe CPT/Inf (2020)13.

10 <https://www.polfed.org/campaigns/protect-the-protectors/>

11 <https://www.policefed-ni.org.uk/media-centre/2020/march/pfni-tells-policing-board-to-end-dithering-on-spit-and-bite-Guards>

12 <https://www.newsletter.co.uk/news/crime/police-federation-rejects-call-phase-out-spit-Guards-ni-our-officers-fear-contracting-covid-3033234>

During 2020 the Police Federation for Northern Ireland took judicial review proceedings against the PSNI, seeking a wider roll out and, partly as a result, the Chief Constable extended the number of officers with access to Spit and Bite Guards. On 25 January 2021, the Chief Constable extended the provision of Spit and Bite Guards to all frontline officers as a temporary measure for the duration of the COVID-19 pandemic. The EQIA stated that this enhanced roll out of Spit and Bite Guards fulfilled the Chief Constable's obligations as an employer under relevant Health and Safety legislation to provide safe systems of work for his employees.

MEDICAL CONSIDERATIONS

The Chief Constable's announcement in March 2020 that Spit and Bite Guards would be made available to custody officers due to the exceptional circumstances faced from the COVID-19 pandemic described them as "protective equipment". PSNI have stated that although Spit and Bite Guards are not anti-viral PPE, they are a piece of work equipment which can be used as a transmission-based precaution in order to reduce the likelihood of droplet virus particles being distributed through spitting and/or biting.

PSNI's Chief Medical Officer advised in 2020 that:

"We need to prevent spitting or biting because spitting generates droplets which will spread the virus if they enter the eyes, mouth or nose of another individual (direct transmission) or if the droplet falls on items such as clothing which the individual then touches and transfers to their eyes, mouth or nose (indirect transmission). Droplets can range from aerosol (very small and remain airborne for some hours) to larger particles, all of which can fall on surfaces to create fomites. If an individual is generating deep lung air in spitting this may create aerosols, which increase the risks to officers and staff as aerosols remain airborne for longer than droplets, as they are smaller in size. The scientific evidence is not developed enough yet but, where aerosols are generated, there is a requirement for a higher level of PPE which officers and staff may not be able to fit properly in high intensity confrontational incidents. Sputum is also produced from deep lung air and can contain high concentrations of SARS-CoV-2. Spitting can contain muco-salivary secretions. Biting will create an indirect transmission risk for officers and staff who touch the wound and then their mouth, eyes and nose".

In defining the aims of the accompanying Guidance, PSNI state that Spit and Bite Guards are a tactical option to protect police, police staff and members of the public from offenders who spit or bite. The application of a Spit and Bite Guard aims to reduce the risk of contamination or injury to police officers, staff and members of the public. PSNI also highlight that during March 2020, the risks from COVID-19 were largely unknown and its effect, including transmission leading to infection, is still being researched, and is still not fully understood. There is a high degree of uncertainty with this particular virus hence that all measures to protect individuals from the possible spread are important.

PSNI's Occupational Health and Welfare Department carried out a study of the general impact of spitting and biting on staff. The study showed that an estimated one in five officers are adversely impacted by spitting and biting incidents, citing long-term psychological impacts from being spat at or bitten.

PSNI have stated that whilst there is limited direct evidence that a live virus is significantly spread via saliva, blood-stained saliva or blood, there is also no direct evidence that it is not spread this way. The Chief Constable assured the Policing Board in March 2020 that his decision would be reviewed monthly and that the issue of Spit and Bite Guards would be accompanied by appropriate training and Guidance. As a result, a review of the use of Spit and Bite Guards was presented to the Board in September 2020. The review included an assessment on the emotional and psychological impact on officers who had been spat upon or bitten provided by their Chief Medical Officer.¹³

The objective of this assessment was to undertake a study using validated psychometric questionnaires on a sub-set of officers who had been spat on or bitten in the previous month, to ascertain any acute psychological impacts from the assault.

Of 29 eligible individuals, only six responded to the request to participate and it is difficult to assess the extent of its wider impact. The study identified one individual as meeting the definition of Acute Stress Disorder (ASD). Four participants were identified as having sleep issues and indicating they were vigilant and 'on the lookout' for danger. None of the participants required time off work due to the spit/bite incidents. The individual identified as meeting the definition of Acute Stress Disorder expressed concern that the assailant who spat on them was an intravenous drug user and thus high risk.

The Chief Medical Officer further advised in 2020:

"Although Spit and Bite Guards are not anti-viral PPE, they are a piece of work equipment used as a transmission-based precaution to reduce the likelihood of droplet virus particles being demonstrated where individuals display a disregard for the transmission of disease by spitting or coughing deliberately at officers.

No single piece of PPE or work equipment can guarantee that viral infection will not spread. All PPE and work equipment issued to our officers and staff is designed to reduce the risk associated with infections, in other words, to lower the likelihood of infection being passed on to officers, staff or members of the public."

13 The research conducted by PSNI's Chief Medical Officer can be found on page 22 of the EQIA - <https://www.psnipolice.uk/globalassets/inside-the-psni/our-policies-and-procedures/equality-diversity--good-relations/documents/stage-1-4-report-draft-amendments-v5-final-003-002-002.pdf>

PSNI have accepted that the risk of contracting a blood-borne virus from spit/bite injuries is very low and that psychological impact is the primary risk to officer's lives. Viewing some of the very difficult incidents via BWV it would not be surprising that officers have been impacted by the events they had to contend with whether or not they were spat at or bitten during those. Whilst PSNI have accepted that the risk is low, when defining the aims of the Guidance, PSNI have defended their use as a means to protect police officers from the threat of airborne viruses or saliva transfer infections by spitting and biting. The medical evidence from 2020 relied upon by PSNI focuses on the low risk of transmission of disease through spitting and/or biting, however there is an absence of any evidence demonstrating the effectiveness of the Spit and Bite Guard in protecting officers, despite this being the stated rationale for their original introduction.

Spread of COVID-19

Recent research has shown that officers have been subject to increased cough and spit attacks as offenders have sought to 'weaponise' COVID-19.¹⁴ However, in a letter to Amnesty International Northern Ireland, dated 9 June 2020, the PSNI confirmed that the manufacturer of the Spit Guard Pro model used declared that this device provides no protection against airborne or respiratory droplet spread of COVID-19. The PSNI states: "The product will not prevent aerosols from coughing or sneezing and is therefore not an effective means to prevent Covid-19."¹⁵ Similarly, the Policing Authority contacted the manufacturer and distributor of the anti-spit device used by An Garda Síochána. They stated that the device is designed to prevent spitting into the face of a police officer. It cannot be guaranteed to prevent the transmission of other aerosols and has not been tested against airborne or respiratory droplets of COVID-19.¹⁶ The Irish Council for Civil Liberties (ICCL) argued that this significantly undermines the initial justification for 'Anti-Spit Guards' introduction in Ireland, which were also brought in as a temporary response to COVID-19. The ICCL believes that Spit and Bite Guards should have been removed from the Garda officers' kit as soon as this information emerged.¹⁷

In the Board's Thematic Review into the Policing of COVID-19, it was recommended that:

'Spit and Bite Guards should be phased out 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.'

14 C De Camargo, The weaponising of COVID-19: Contamination prevention and the use of spit hoods in UK policing, 2021 The Police Journal: Theory, Practice and Principles <https://journals.sagepub.com/doi/pdf/10.1177/0032258X211018787>

15 <https://www.amnesty.org.uk/press-releases/uk-police-spit-hoods-may-increase-risk-covid-19-spread-and-should-not-be-used-police>

16 https://www.policingauthority.ie/assets/uploads/documents/Submission_to_evaluation_of_Anti_Spit_Hoods.pdf

17 <https://www.iccl.ie/wp-content/uploads/2020/08/ICCL-submission-to-An-Garda-Siochana-on-spit-hoods.pdf>

PSNI have noted that PPE is not sufficient as protection as officers may not be able to fit it on properly in high intensity confrontational incidents.¹⁸ However, Amnesty's policing experts warned that the process of fitting the Guard, and the likely ensuing struggle would result in a 'cloud of virus particles' as the struggle is likely to be a 'significant aerosol generating event'. In a joint letter from both the ICCL and Amnesty International to the Garda Commissioner expressing concerns that a Spit and Bite Guard could actually exacerbate the risk of the spread of Covid-19, as follows:

"We are additionally concerned that the act of placing a spit hood on an arrested person, and the likely ensuing struggle, has the potential to cause significant aerosol generation. If the arrested person is infected with COVID-19, this would present a clear and immediate infection risk to the Officers and others in the vicinity. When in place over the arrested person's head, the spit hood would do nothing to prevent the further spread of the virus via coughing, sneezing or exhalation. The use of spit hoods could therefore not only fail to offer protection against infection, but could in fact place Officers at greater risk. This in turn exacerbates the risk of wider community transmission of COVID-19."¹⁹

Outside of any potential risks to officer safety, Amnesty is also concerned about the potential adverse risks of using these devices on individuals who are ill with COVID-19, or in recovery from it. It is known that COVID-19 causes severe breathing difficulties, including damage to the lungs and airways. Any use of force that can restrict or impair breathing in these circumstances therefore presents additional risks of adverse outcomes. In addition, any struggle, panic, stress, or anxiety caused by the act of applying and using a Guard is likely to cause extra stress on the respiratory system irrespective of the breathability of the Guard itself.²⁰

Transmission of other diseases/infection

It is understood that one of the reasons Spit and Bite Guards might continue to be retained beyond the initial threat of COVID-19 is to reduce the possible risks of transmission of infection for law enforcement professionals exposed to biological fluids. Other forces have referred to the need to protect police officers from transmission of diseases such as hepatitis C (HCV) or HIV but medical research shows that neither of these diseases are likely to be spread through saliva. Others have pointed out that the risk of hepatitis B (HCB) can be mitigated by being vaccinated, as those health workers regularly exposed to such risks have to do.²¹

18 <https://www.psnipolice.uk/globalassets/inside-the-psni/our-policies-and-procedures/equality-diversity--good-relations/documents/stage-1-4-report-draft-amendments-v5-final-003-002-002.pdf>

19 <https://www.iccl.ie/wp-content/uploads/2020/08/ICCL-submission-to-An-Garda-Siochana-on-spit-hoods.pdf>

20 <https://www.amnesty.org.uk/press-releases/uk-police-spit-hoods-may-increase-risk-covid-19-spread-and-should-not-be-used-police>

21 Kennedy et al, The use of Spit Guards (also known as spit hoods) by police services in England, Wales and Northern Ireland: to prevent transmission of infection or another form of restraint? 2019, <https://www.sciencedirect.com/science/article/pii/S1752928X19300708>

In 2017, Avon and Somerset Police Forces have been highly criticised and have been forced to apologise for suggesting that Spit and Bite Guards are being used to protect police officers from these diseases, particularly due to the prevalence this has on reinforcing the stigma for people living with those conditions.²²

A recent systematic review of literature relating to the risk of HIV transmission through biting or spitting concluded that there is no risk of transmitting HIV through spitting, and the risk through biting is negligible.²³ The research found that there were no published cases of HIV transmission attributable to spitting, which supports the conclusion that being spat on by an HIV-positive individual carries no possibility of transmitting HIV. Despite biting incidents being commonly reported occurrences, there are only rare case reports of HIV transmission following a bite. With regard to HCV, the review found no reported cases of transmission through spitting and only 2 through biting. The review found “one plausible case of transmission of HBV through spitting”. The authors concluded that “the risk of acquiring HCV through spitting is negligible and is very low for HBV”. They further concluded that the risk is also low for acquiring HBV and HCV through biting, especially if no blood is apparent in the saliva. The review highlighted that post-exposure prophylaxis is not indicated after a bite in all but exceptional circumstances and that policies to protect emergency workers should be developed with this evidence in mind.²⁴ The available medical literature contrasts with the emphasis by Spit and Bite Guard advocates on the risk of police officers acquiring infectious diseases.

Lack of available data and psychological impact

There is concern that the use of Spit and Bite Guards is growing without any sound evidence base that they are necessary, effective or proportionate to the stated aims of police services that have deployed them. The research shows that there was a lack of evidence even prior to the widespread introduction of Spit and Bite Guards. A recent study found that there has been a paucity of information available from police services in respect of quantifying the numbers of police officers who have contracted infectious disease as a result of spitting and/or bites, despite the fact that risk of infection is a driver of police services adopting the use of Spit and Bite Guards. The same study also found that consideration must be afforded to the possibility that the devices, in practice, represent another form of mechanical restraint rather than a means to prevent transmission of infection.²⁵

22 <https://www.bbc.co.uk/news/uk-england-somerset-42068820>

23 Creswell et al, A systematic review of risk of HIV transmission through biting or spitting: implications for policy, 2018 <https://onlinelibrary.wiley.com/doi/full/10.1111/hiv.12625>

24 <https://onlinelibrary.wiley.com/doi/full/10.1111/hiv.12625>

25 Kennedy et al, The use of Spit Guards (also known as spit hoods) by police services in England, Wales and Northern Ireland: to prevent transmission of infection or another form of restraint? 2019, <https://www.sciencedirect.com/science/article/pii/S1752928X19300708> <https://www.bbc.co.uk/news/uk-england-somerset-42068820>

PSNI have accepted that the risk of contracting a virus from spit/bite injuries is low and have noted that it is psychological impact to officers which is their primary justification. The distress that spitting, particularly during a pandemic, must cause to officers, needs to be properly recognised. It is also noted that spitting is a form of assault which can be prosecuted as such. However, if officers were better equipped with the scientific evidence surrounding the very low chance of transmission, this may lower the risk of any psychological impact. 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 (CoP) 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. In 2017 the Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS) stated:

'Forces and the public would also benefit from further consideration of the efficacy, safety and legitimacy of use of spit-guards, with a view to providing national advice or Guidance that encourages safe and proportionate use across all forces.'²⁶

Amnesty highlighted that:

"Spit hoods could actually be seen as an un-safety device and Police Chiefs should make it crystal clear to all their officers that spit hoods do not offer any protection from COVID-19 transmission or infection. Police forces across the UK should now withdraw them from use in possible or suspected cases of COVID."

The Committee on the Administration of Justice (CAJ) have argued 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.²⁷

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 and appropriate psychological counselling were necessary. 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:

26 Her Majesty's Inspectorate of Constabulary Fire & Rescue Services. PEEL: Police Legitimacy 2017: A National Overview (December, 2017)

27 <https://caj.org.uk/wp-content/uploads/2021/05/Response-to-the-PSNI-consultation-and-EQIA-on-the-temporary-use-of-spit-and-bite-Guards.pdf>

“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 onward transmission there was concern of that would have warranted no in person contact with a chemotherapy patient.”²⁸

The PSNI should ask the College of Policing or other similar authoritative body to publish Guidance with the evidence available regarding infection, and the role of Spit and Bite Guards, and clarify the basis for the roll out of Spit and Bite Guards, including any medical evidence regarding the nature and type of Spit and Bite Guard that has been tested, and the medical implications of such devices. Recent research suggests that the use of Spit and Bite Guards should be more closely monitored by police officers, including mandatory documentation of adverse occurrences (such as episodes of impaired consciousness) and of uses associated with higher risk (such as any use after irritant/pepper sprays and occurrences where detainees are left unsupervised). It was also recommended that assessment by a healthcare professional be mandatory where a Spit and Bite Guard has been used.

RECOMMENDATION 1

The lack of sound medical evidence that demonstrates the effectiveness of Spit and Bite Guards in preventing the transmission of COVID-19 or any other infection means that PSNI should make it clear to officers and the public that the use of Spit and Bite Guards on medical grounds alone is not justified.

THE RISKS OF SPIT AND BITE GUARDS ON DETAINEES

Many Human Rights advocates have raised specific concerns about the use of Spit and Bite Guards. Liberty called them “distressing, degrading and potentially lethal”.²⁹ Amnesty International has described them as “cruel and dangerous” as they can induce panic, cause distress and trauma, risk suffocation and can exacerbate dangerous situations.³⁰ In other jurisdictions where Spit and Bite Guards have been introduced over the past few years, their use has been described as “medieval”; “barbaric”; and those subjected to them have described feeling like they have been “treated like a dog”.³¹

It has also been recently suggested that Spit and Bite Guards, in obstructing the wearer's face, can impair police officers' ability to identify medical conditions and notice distress or pain.

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

29 <https://www.libertyhumanrights.org.uk/issue/the-rise-of-spit-hoods/>

30 <https://www.amnesty.org.uk/press-releases/uk-police-spit-hoods-may-increase-risk-covid-19-spread-and-should-not-be-used-police>

31 <https://www.iccl.ie/wp-content/uploads/2020/08/ICCL-submission-to-An-Garda-Siochana-on-spit-hoods.pdf>

Liberty has stated that they are designed to block spit, vomit, blood or other substances escaping them. So when a wearer discharges a substance into the guards, the breathability of the fabric dramatically drops and the risk of suffocation rises.

The PSNI's Guidance of the use of Spit and Bite Guards states that in a medical emergency the Spit and Bite Guard should be removed immediately and suspects should be closely monitored for signs of asphyxiation. The Northern Ireland Human Rights Commission (NIHRC) highlighted that whilst it is encouraging that these safeguards are being addressed within the PSNI's Guidance, it is arguably difficult to monitor a suspect continuously to ensure that they are not having difficulty breathing, particularly where there may be other issues arising when dealing with, for example, a wider public order incident.³²

A recent study on the physiological effects of a 'spit mask' found that in healthy adult subjects, there were no clinically significant differences in respiratory or circulatory parameters while wearing the spit mask.³³ However, the study did not take into account the additional factors involved with real-world spit mask use including: the subject's past medical history, blockage of the mask by fluid, physical exertion, or drug or alcohol intoxication. Furthermore, the study did not replicate the duress and anxiety often involved with such a real-world encounter. Spit and Bite Guards have been used widely in the USA with a number of reported deaths linked to their use, the most recent example being Daniel Prude in September 2020.³⁴ The cause of death in each case was asphyxiation, when the fabric became saturated with blood, mucus or vomit. In one case, the irritant spray also used could not dissipate once the hood was applied which caused injury to the detainee. Risk assessments by the police have highlighted the dangers of breathing restriction and asphyxia and the Independent Office of Police Conduct (IOPC) has investigated the deaths of several adults following the use of Spit and Bite Guards in the UK, including Jonathan Pluck in 2009 who was restrained in a cell, strip-searched and left face down on a mattress, and Terry Smith in 2013.³⁵ In the IOPC's Deaths during or following Police Contact: Statistics for England and Wales 2020-21, the data shows that 12 of the 19 people who died had some force used against them either by officers or members of the public before their deaths and two of these deaths involved a Spit and Bite Guard.³⁶ One of the incidents is detailed below:

'Police were called to a concern for welfare for a man who had tested positive for COVID-19 and was in isolation. An officer attended the property and the man jumped from a first-floor window. An ambulance was requested. The man was handcuffed.

³² <https://nihrc.org/uploads/publications/NIHRC-Spit-and-Bite-Guards-Submission.pdf>

³³ Marigold et al, Further study on the physiological effects of an alternative spit mask, 2020 <https://pubmed.ncbi.nlm.nih.gov/32275230/>

³⁴ <https://www.bbc.co.uk/news/world-us-canada-54007884>

³⁵ <https://www.theguardian.com/uk-news/2018/jul/05/inquest-jury-condemns-surrey-police-over-death-of-man-placed-in-spit-hood>

³⁶ IOPC, Deaths during or following police contact: Statistics for England and Wales 2020-21, <https://www.policeconduct.gov.uk/deaths-during-or-following-police-contact-statistics-england-and-wales-2020-21>

Paramedics arrived and attempted to place a mask and visor on the man because he was spitting. The man, who continued to be restrained on the floor, apparently shook these off and was moved to an ambulance to be taken to hospital. There was a reported delay in entering the hospital owing to a backlog of ambulances. While in the ambulance an officer placed a spit hood over the man. The man then became unresponsive. He was taken into hospital where he died shortly afterwards. His cause of death is awaited.³⁷

It is important to note that the use of restraint, or other types of force, did not necessarily contribute to the deaths. In January 2019, HMICFRS published its inspection of conditions in Metropolitan Police Service (MPS) custody and reported their main concern in relation to Spit and Bite Guards was the length of time some detainees remained hooded, poor techniques, and the proportionality of some of the force used for the risks posed.³⁷

Liberty have found that Black and ethnic minority communities, which already account for a disproportionate number of deaths after police use of force or restraint, are likely to be disproportionately targeted by Spit and Bite Guards, risking further damage to the police's already fraught relations with the communities they serve. Liberty stated that the risk that particular groups will be targeted is exacerbated by vague, undisclosed or non-existent sets of police Guidance on what can trigger the use of the Guard, leaving open the possibility that police may decide someone poses a 'threat' of spitting simply by how they look or where they are from.³⁸ Amnesty have also found that members of the BAME community have been disproportionately targeted, as restraint devices, including Spit and Bite Guards, are 4 times more likely to be used on Black people.³⁹ Similarly, the Children's Rights Alliance for England found that across the whole period they requested for 2017 and 2018, BAME children accounted for 34% of Spit and Bite Guard use nationally and 72% of MPS use. This shows hugely disproportionate use of Spit and Bite Guards on BAME children given that they make up approximately 18% of the 10-17 year old population in England.

The ICCL have noted that the use of Spit and Bite Guards does not correlate very closely with the idea of the transformation from a 'police force' to a 'police service for the community' – or, policing by consent. In their research, they found that many police forces have expressed concern about 'optics' and one force in the UK encouraged police officers to remove them as soon as possible so as not to be seen by more members of the public than necessary. In their submission to An Garda Síochána regarding their use of 'Spit Guards', the Irish Council for Civil Liberties highlighted that:

'If this is a piece of kit that needs to be hidden from public view, this raises questions as to whether it is an acceptable piece of kit for a democracy'.⁴⁰

37 <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/01/Metropolitan-Police-Service-Web-2018.pdf>

38 <https://www.libertyhumanrights.org.uk/issue/the-rise-of-spit-hoods/>

39 <https://www.amnesty.org.uk/press-releases/uk-police-spit-hoods-may-increase-risk-covid-19-spread-and-should-not-be-used-police>

40 <https://www.iccl.ie/wp-content/uploads/2020/08/ICCL-submission-to-An-Garda-Siochana-on-spit-hoods.pdf>

The Policing Authority found in their monitoring of 'Anti-Spit Hoods' usage a number of areas of concern. These include:

- The use of [anti-spit hoods] in addition to other instruments of force including incapacitant spray and batons during incidents;
- That approximately 40% of individuals were judged to be intoxicated;
- A number of incidents in which individuals were judged to have mental health issues;
- The use of [anti-spit hoods] on children under the age of 18 years with one deployment on a 14 year old; and
- One incident where an anti-spit hood was applied for a period of five hours.

The Policing Authority stated that it is worth noting that while utilised by the Irish Prison Service, anti-spit hoods are not used by other public bodies that are operating on the front line with vulnerable people, for example by services dealing with psychiatric illness nor in an acute hospital setting with agitated patients.⁴¹ In the above listed concerns and based on a review of incidents of use, a significant number of persons to whom anti-spit hoods have been applied have been perceived by Gardáí to demonstrate such vulnerabilities.

Similar issues were identified in the PSNI's EQIA. There were specific considerations highlighted regarding the use of Spit and Bite Guards on children, those with a mental health issue or persons with disabilities. Their use on religious background and gender were also identified. These issues will be explored in detail below.

CHILDREN AND YOUNG PEOPLE

The Children's Rights Alliance for England commented in 2017:

"Hooding children is distressing and dangerous. The evidence shows that the children who are in contact with the police are disproportionately likely to have experienced neglect, abuse, been in care, have language or learning difficulties or other vulnerabilities. Putting these children through more trauma by restraining and hooding them is not only damaging but potentially unsafe - adults have died following the use of spithoods. Alternatives such as visors or Spit Guards worn by police officers are used in other forces in England to deal with disgusting incidents of spitting. The Met says, understandably, it needs to protect officers from harm but that mustn't come at the cost of children's safety."⁴²

41 Neither the prison service nor any other public facing public services have access to Spit and Bite Guards.

42 <http://www.crae.org.uk/news/crae-responds-to-metropolitan-police-announcement-on-spit-hoods/>. See also Children's Rights and policing: Spit-hoods and children's rights, CRAE.

As at 18 November 2021, PSNI have stated that 13 children under 18 years have had a Spit and Bite Guard applied;

- Two 17 year olds;
- Five 16 year olds;
- Three 15 year olds;
- Three 14 year olds.

In three instances the Guard was applied twice resulting in 16 applications in total. On the basis of the available data, PSNI have concluded that adverse impacts on children and young people are likely to arise from the introduction of Spit and Bite Guards. Police forces in the UK have used Spit and Bite Guards on children as young as ten years old.⁴³ In 2012, in England, an eleven year old girl with disabilities was restrained with a Spit and Bite Guard, handcuffed and had leg straps applied. The police force responsible failed to properly explain why and the then IPCC found eleven officers and one police staff member had cases to answer for misconduct and criticised a 'widespread failure by Sussex police officers to document their use of force, adding: 'using force on a person so young and vulnerable is a grave occurrence.'⁴⁴ The Children's Alliance for England have found that Spit and Bite Guard use on children has rapidly increased in recent years. In the UK, between April 2018 and March 2019, they were used 312 times on under-18s, including four times on children under 11 years of age compared to 27 uses in 2016 and 47 uses in 2017.⁴⁵

The College of Policing (CoP) and National Police Chief Council (NPCC) Personal Safety Manual sets no lower age limit for the application of the Spit and Bite Guard. The NPCC Update on the use of Spit and Bite Guards 2017 states:

'The NPCC does not support the implementation of a minimum age limit for the use of Spit Guard. Whilst it would be exceptionally rare for a child to have this tactic used, the imposition of a minimum age limit could have the unintended consequence of officers needing to use a greater amount of physical force on children which clearly could not be proportionate if there was a less intrusive tactic available.'

There is variance throughout the UK on an age limit. Police Scotland, West Yorkshire Police and Wiltshire Constabulary are examples of forces with no lower age limit. An Garda Síochána do not use Spit and Bite Guards on children under 12 years of age. In 2016, when the UN Committee on the Rights of the Child (UN CRC) 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.

43 Children's Rights Alliance England FOI response identified that a spit hood was used by Cheshire police on a 10 year boy in May 2018.

44 The Independent (8 June 2016) 'Sussex Police put 11-year-old disabled girl in handcuffs and leg restraints, Independent Police Complaints Commission finds'.

45 http://www.crae.org.uk/media/128551/CRAE_POLICING-SPITHOODS_PRINT.pdf

Specifically the Committee was concerned about 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.⁴⁶ The PSNI EQIA has a section regarding training and after care, however the Northern Ireland Commissioner for Children and Young People (NICCY) stated that the EQIA does not evidence the effectiveness in safeguarding children and young people who have been subjected to the use of Spit and Bite Guards, particularly around the lasting effects of the trauma they would experience.

Children are not, of course, mini-adults. The UN bodies, which enforce Human Rights standards, have recognised that they must be treated differently because of their unique situation – children have distinct vulnerabilities, greater developmental needs and evolving capacities. This, when combined with the reality of having less power than adults and often not being taken seriously, means they must be treated differently when they come into contact with the criminal justice system. The Children's Rights Alliance for England has drawn attention to recent developments in neuroscience that identify that the frontal lobes of the brain are still developing in humans into their 20s. This area of the brain regulates decision making, impulse control and affects a child's ability to cope with stressful situations. The Children's Alliance for England states that using a Spit and Bite Guard [on a child] risks not only heightening their fight or flight response, but also risks subsequent psychological damage.⁴⁷ The CLC in NI have also highlighted that a police officer using a Spit and Bite Guard on a child cannot know if a child has a learning disability or suffers from asthma.⁴⁸ In a submission to the UN's Committee against Torture, the Equality and Human Rights Commission identified that risk assessments associated with Spit and Bite Guards in England and Wales "do not take into account the specific dangers which spit hoods can represent to children".⁴⁹

In the EQIA, PSNI state that the Spit and Bite Guards were used on subjects at the upper end of the definition of a child. However Article 1 UN CRC identifies that a child is any human being under the age of 18 and there is no upper end or sliding scale. The NIHRC have stated that the use of Spit and Bite Guards cannot be justified on the basis that they are used on older children and have recommended that they should not be used on any child under the age of 18 in any circumstance.⁵⁰ The UN CRC note in General Comment No. 20 that "measures are needed to reduce adolescents' vulnerability both as victims and perpetrators of crimes".⁵¹

46 CRC/C/GBR/CO/5 (2016) Para 39

47 http://www.crae.org.uk/media/128551/CRAE_POLICING-SPITHOODS_PRINT.pdf

48 <https://childrenslawcentre.org.uk/tag/spit-and-bit-Guards/>

49 Equality and Human Rights Commission, 'Torture in the UK: Update Report: Submission to the UK Committee against Torture in response to the UK List of Issues', May 2019, at 53.

50 <https://nihrc.org/uploads/publications/NIHRC-Spit-and-Bite-Guards-Submission.pdf>

51 CRC/C/GC/20, Committee on the Rights of the Child, General Comment No. 20 on the implications of the rights of the child during adolescence, 6 December 2016, at para 86.

MENTAL HEALTH AND DISABILITY

There are two issues that need to be differentiated in relation to mental health and disability. The first relates to the question of the greater adverse impact of the use of Spit and Bite Guards on people with disabilities and the second concerns issues relating to the reasons for spitting and biting. This section deals with the first question.

The PSNI EQIA identified individuals with poor mental health as a having potential adverse impact from the use of Spit and Bite Guards. PSNI have stated that their data, unsurprisingly, suggests that people with mental health problems are more likely to be subject to Spit and Bite Guard use than people with good mental health and that 75% refers to individuals who were recorded as having a self-harm flag or suicidal flag prior to the application of the Spit and Bite Guard.

In 68 out of 84 uses of Spit and Bite Guards in 2020, the subject reported a disability or police noted a disability. In 81 out of 84 of these occurrences, drugs/alcohol were noted as a factor. Therefore, at least 81% of uses of Spit and Bite Guard were on a male or female with a disability. Nationally, 1,724 applications of a Spit and Bite Guard of a total of 7,172 involved a person with a disability. There is no data to consider drug or alcohol as a factor or disabling illness in these incidents. This represents a total of 27% of occurrences nationally involving a person with a mental or physical disability. Instances where Spit and Bite Guards have been applied to people with disabilities in NI are at a considerably higher level than across the rest of the UK. Despite the above figures, the EQIA recognised children, men and individuals with poor mental health as having a potential adverse impact, but did not highlight individuals with physical or neurological disability. The CLC have requested that persons with a disability (not just those with a mental health need) are also included in this section.⁵²

The PSNI Guidance on the use of Spit and Bite Guards has identified that if the officer is 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'. However, given the extremely high statistics on the use of Spit and Bite Guards on persons with disabilities, it is difficult to ascertain how this Guidance is being applied in practice. CLC have noted that this suggests significant failures in the training provided for the use of these devices. The Children's Rights Alliance for England have noted that individuals with disabilities can be subjected to trauma through the use of a Spit and Bite Guard, highlighting the example of an 11 year old girl with a rare neurological disability similar to autism, who was hooded, restrained and detained in police custody for a total of more than 60 hours as noted previously. The child's condition meant she can become upset when over-stimulated and can sometimes spit out of frustration. The child's mother stated that 'due to her disability she finds it very upsetting to have someone even touch her head, having strangers put a bag over her head when she was already extremely distressed was profoundly traumatic for her.'⁵³

52 <https://childrenslawcentre.org.uk/?mdocs-file=4745>

53 http://www.crae.org.uk/media/128551/CRAE_POLICING-SPITHOODS_PRINT.pdf

Spit and Bite Guards are a form of mechanical restraint and people with disabilities are often subjected to a disproportionate use of restraint. The Committee on the Rights of Persons with Disabilities (UN CRPD) has noted that; “Persons with disabilities ... can be disproportionately affected by violence and abuse, including physical and humiliating punishments”.⁵⁴

In its concluding observations on the United Kingdom, UN CRPD noted concerns on the continued use of “physical, mechanical and chemical restraint” on persons with disabilities in prisons and youth justice settings. The UN CRPD Committee recommended the State adopt measures to “eradicate the use of restraint for reasons related to disability within all settings”.⁵⁵

The risks associated with using a Spit and Bite Guard on a person with mental health issues, physical disabilities or subject to drug or alcohol intoxication has been outlined above but there is also a wider issue. Although the Human Rights Advisor only viewed five BWV recordings of the use of the Guard it was clear that the constant factor in all the cases was that the person appeared to be disconnected from reality and not acting in their own best interests (let alone treating the officers properly). Any actions by officers to further restrain them appeared to make their disconnected state worse. This is not to excuse the behaviour witnessed, but to underline the fact that their actions were not rational and they needed help. Expert help from medical personnel might, if they had been available, have made a significant difference but equally likely to have helped would be de-escalation and calming measures. In this context it is important to note that suspects have to be restrained properly before a Guard is applied and in all of those incidents viewed on BWV, officers could have safely taken a step back. The driver to take action, to resolve the situation and, therefore, to apply a Guard appeared partially as a result of the need to take control and to resolve the situation quickly rather than to take time and to avoid the use of yet another restraint measure (the application of a Guard).

GENDER AND RELIGIOUS BACKGROUND

At 18 November 2021, 175 of the 202 deployments of Spit and Bite Guards were applied to men, the remaining 27 were applied to women. The EQIA concluded that this constituted an adverse impact on men, particularly young men. Throughout the UK, 5,522 of 7172 instances where a Spit and Bite Guard was applied involved males, accounting for 77% of all uses, compared to 1,580 incidents (22%) involving females. In order to mitigate this adverse impact, the NIHRC recommends that the PSNI create a targeted education campaign directed at younger people, particularly males, to outline the unacceptability of spitting and biting, the dangers involved and legal ramifications alongside the PSNI's Guidance on the use of Spit and Bite Guards.⁵⁶

54 CRPD/C/GC/4, UN CRPD Committee, 'General Comment No. 4 on the Right to Inclusive Education', 25 November 2016, at para 51.

55 CRPD/C/GBR/CO/1, UN Committee on Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, 3 October 2017, at para 36.

56 <https://nihrc.org/uploads/publications/NIHRC-Spit-and-Bite-Guards-Submission.pdf>

PSNI statistics have identified that, of the 202 individuals on whom a Spit and Bite Guard was used, at 18 November 2021, whose religion was recorded, 87 individuals identified as Roman Catholic. This accounts for 43% of all applications of Spit and Bite Guards during that recorded period, while individuals on whom a Spit and Bite Guard was used who identified as Protestant accounted for only 20%. In this same period, 39 individuals (20%) on whom Spit and Bite Guards were used identified as having no religion and 30 individuals (15%) refused to answer. NIHRC have stated that, arguably, had these individuals identified their religious background this statistic could potentially be more balanced. However, from this data there currently seems to be a significant differential impact on members of the Catholic community. The EQIA concluded that differential or adverse impacts on people from different religions “are unlikely to arise from the introduction of Spit and Bite Guards”. This evidence suggests that Spit and Bite Guards have been used more frequently on members of a particular religion, but no explanation or analysis is provided as to the reasons for this differential. The EQIA noted that there is no differential impact on people with different political opinions from the introduction of Spit and Bite Guards, NIHRC have highlighted that given the close relationship between religious background and political opinion in Northern Ireland, there is a link between these two sets of statistics.⁵⁷ Of course, there is an additional difficulty with the evidence that this apparent indirect discrimination is the wider cultural and ideological symbolism of the ‘Hooded Men’ – those subjected to internment and the ‘five techniques’ found to violate Article 3 of the ECHR.⁵⁸ Does this mean that those in the Catholic community are more likely to suffer from an adverse impact and/or are more likely to suffer from degrading treatment contrary to Article 3?

When completing equality monitoring return forms, employers are encouraged to use the “Residuary Method” is to help determine religious background where an employee or applicant has refused to complete a monitoring questionnaire or does not identify themselves as a member of the Protestant or Roman Catholic Community. This involves looking at additional information relating to an individual to ascertain their religious community background. In the Equality Commission NI’s Fair Employment Code of Practice, there is a list of potential information criteria, including using the individual’s surname or address. NIHRC noted that this criteria could potentially be utilised by the PSNI in recording or confirming religious background where a Spit and Bite Guard has been applied to an individual. The NIHRC also recommended that the PSNI continues to carefully monitor and record information around religious background to ensure that there is no differential or adverse impact based on community background and that, where an individual on whom a Spit and Bite Guard is used refuses to identify with a religion or where the religion remains unknown, the PSNI could utilise the Residuary Method to make an informed assumption as to the individual’s potential community background.⁵⁹

57 <https://nihrc.org/uploads/publications/NIHRC-Spit-and-Bite-Guards-Submission.pdf>

58 Ireland v UK

59 Ibid.

The CLC have also requested that that members of the Catholic community are also included in the EQIA as a Section 75 group which may suffer an adverse impact from Spit and Bite Guards, in light of the statistics provided.⁶⁰

In December 2021, The Detail, an online magazine, published the results from Freedom of Information requests made to the PSNI. The figures suggest that almost twice the number of Catholics than Protestants were arrested and charged over the last five-year-period. These figures appear to be based on information provided to the PSNI by the arrested person themselves when requested to do so by the PSNI custody officers on arrival in the custody suite. They should, therefore, be treated with some caution. However, they appear to be the best evidence currently available and the Policing Board has, separately, asked the PSNI to investigate the reasons for this apparent bias.

However, in light of these recent findings, the higher arrest rate of Catholics than Protestants by PSNI might account for the 80% discrepancy in use of Spit and Bite Guards. Irrespective of the need to investigate the issues with the overall arrest rate, without any further explanation or justification from the PSNI this discrepancy in the use of Spit and Bite Guards requires its own explanation. This is indirect discrimination in the context of equality law and in relation to Article 5 and Article 14 of the European Convention of Human Rights.

The Equality Commission recommends the following actions which are necessary to comply with the equality duty in Section 75 and Schedule 9 of the Northern Ireland Act 1998:

'In order to effectively demonstrate that a public authority has paid due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations through the implementation of its equality scheme, the Commission recommends that a public authority develops action measures/action plans to promote equality of opportunity and good relations...'

Action measures

Action measures should be specific, measurable, linked to achievable outcomes, realistic and timely. These can include action measures which public authorities initiate, sponsor, participate in, encourage or facilitate and can be internal or external or both.

Action measures should be set out in the public authority's action plan, with performance indicators and timescales for their achievement. The public authority should monitor progress on the delivery of its action plan in conjunction with its scheme.

60 <https://childrenslawcentre.org.uk/?mdocs-file=4745>

It is particularly important when developing action measures to focus on impact and outcomes rather than simply outputs. Public authorities should therefore consider the likely outcome or impact the action measure will have on the promotion of equality of opportunity and good relations; what monitoring information they need to collect in order to evaluate whether the outcome has been achieved; and once the action measure has been taken the degree to which the outcome was achieved.⁶¹

RECOMMENDATION 2

The PSNI should investigate why the statistics in relation to religion appear to demonstrate prima facie indirect discrimination contrary to domestic equality law and in relation to Article 14 of the European Convention of Human Rights.

61 Page 46, Action measures, Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities, 2010.

CHAPTER 3

HUMAN RIGHTS ASSESSMENT

Article 4 of the PSNI Code of Ethics, which draws upon the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, states:

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

This extract of the Code reflects the position in international Human Rights law. The use of a Spit and Bite Guard is a ‘use of force’ and this is accepted by PSNI and Spit and Bite Guards are not part of the officer’s PPE. The use of force by police officers in Northern Ireland is governed by the Criminal Law (Northern Ireland) Act 1967, the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the common law and the Human Rights Act 1998, incorporating the European Convention on Human Rights (ECHR). The ECHR applies directly because s 6(1) of the Human Rights Act 1998 requires the PSNI, as a public authority, to act compatibly with the ECHR. The 1967 Act, PACE and the common law apply to all uses of force by the PSNI and require that it should be “reasonable” in the circumstances. Reasonable in this context, given the engagement of Articles 2 (right to life) and 3 (the right not to be subjected to torture, inhuman or degrading treatment or punishment) should be interpreted as meaning “strictly necessary” in the execution of police duties.

The use of force by police officers engages in a direct and fundamental way the rights protected by the ECHR - Article 2, Article 3 and Article 14. Police officers have the authority to use force in order to defend themselves or another person, to effect an arrest, to secure and preserve evidence or to uphold the peace, but any such use must be justified on each and every occasion. Consideration must always be given to whether there is a viable alternative to the use of force. As a general rule, force and restraints must only be used if and when absolutely necessary and where all other means to contain a specific situation have failed and only when alternatives not using force or using less force are not possible.

Any recourse to physical force in respect of a person already deprived of his liberty, not made strictly necessary by the actual conduct of the detainee, is in principle an infringement of Article 3 because it has the effect of diminishing the human dignity of the individual involved. Any method of restraint used as punishment or retaliation by the police will violate Article 3 whatever the justification purports to be.

It is recognised that there may be times, for example during transit or to prevent serious harm to others, when the use of force and the application of restraint may, unfortunately, be unavoidable. Where this is the case, several conditions must be met and the use of force or application of restraints (a use of force in itself) must be very closely scrutinised to ensure that their use was lawful, necessary and proportional and that, no other alternatives, including de-escalation or disengagement were reasonably possible.

Obviously, a Spit and Bite Guard used incorrectly or for too long might be dangerous or lead to a loss of life, therefore engaging Article 2, the right to life, and that must be factored into any assessment of their use. Similarly, Article 8, the right to private life will be engaged by the use of Spit and Bite Guards and may be subject to violations. However, the rest of this analysis in this section focuses on the issues in relation Article 3 although, to some extent, there is a spectrum of rights from Article 2, 3 and 8.⁶²

The use of a Spit and Bite Guard cannot be regarded as a violation of any of the rights in the ECHR in the abstract, whether any particular deployment is a violation will depend on the facts, the circumstances and, most importantly, the immediate objective justification. However, the evidence so far suggests that many uses of Spit and Bite Guards will not have reached the requirements imposed by human rights law. As important, is that these violations may continue in the future without much more detailed and stricter Guidance for officers. It is hoped that the consequence of this more detailed Guidance will be that officers will be assisted in their desire to comply with Human Rights but, as a result, fewer (if any) deployments will occur.

HUMAN RIGHTS CONSIDERATIONS

In relation to the treatment of those within the criminal justice system, Article 3 and the protection of human dignity the ECtHR has stated:

‘Respect for human dignity forms part of the very essence of the Convention. The object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective. Any interpretation of the rights and freedoms guaranteed has to be consistent with the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society.’⁶³

62 However, the Convention analysis in the ECtHR takes account of an ‘lex specialis’ - if two provisions govern the same situation, the provision governing the specific subject matter will be the basis of the judgment.

63 *Svinarenko v Russia*, para 118. See for more analysis: *Dignity, Degrading Treatment and Torture in Human Rights Law*, Elaine Webster, Routledge, 2018, especially page 50 onwards.

Dignity is a key concept in assessing what Article 3 protects.⁶⁴ There can be little doubt that forcibly covering a person's face and head with a Spit and Bite Guard constitutes degrading treatment, is humiliating and undermines that person's dignity – all the more so if this is carried out in public or in front of their friends, colleagues or family. Although humiliation is also a subjective feeling, being humiliated is also an objective or social fact:⁶⁵

‘...the public nature of the punishment or treatment may be a relevant factor. At the same time, it should be recalled, the absence of publicity will not necessarily prevent a given treatment from falling into that category: it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others.

The key question that needs to be addressed therefore is whether this can be justified on the basis that it is the only way of protecting police officers from being spat at or bitten. Alternatives, which are also discussed below, might include: once the person is restrained can officers back off or use de-escalation techniques; can suspects be transferred to custody in cell vans (not requiring officers to be near the suspect); can there be more use of perspex screens in all police vehicles; and more involvement of medical support and associated options.

There are questions that need to be addressed, both about the nature of the degrading treatment and the degree of humiliation or loss of dignity experienced (including taking into account all the circumstances of the suspect) and, of course, the alternatives reasonably available to protect officers. What cannot be ignored in relation to humiliation and loss of dignity, at least for some members of one community, is the context of the use of Spit and Bite Guards and police officers in Northern Ireland given its history.⁶⁶

Any use of force or restraint by police officers once the person has been detained must be strictly necessary, be based on the behaviour of the detainee (including the previous behaviour) and the particular circumstances (specifically the risks to officers or members of the public) and cease once the circumstances requiring it cease. The use of restraints must not go beyond what can reasonably be considered to be necessary in the circumstances (this is an objective test). Any restraint used must be proportionate, and this includes the principle that the least restrictive method must be chosen.

64 See for instance in relation to detention: Keenan v UK, para 113; McGlinchey and Others v UK, para 46; Karalevicius v Lithuania, para 34; Valasinas v Lithuania, para 102; and Vidish v Russia, para 26.

65 Raninen v Finland, para 55 and see Dignity, Degrading Treatment and Torture in Human Rights Law, Elaine Webster, Routledge, 2018, especially page 69 and the literature references.

66 See Ireland v UK and, in relation to the unlawful use of internment on both sides of the border, Lawless v Ireland.

The hooding of detainees, as part of a series of other techniques during internment in the 1970's in Northern Ireland, has been found by the European Court of Human Rights (ECtHR) and the Court of Appeal in Northern Ireland to violate Article 3.⁶⁷

Obviously, obscuring a detainee's sight for any length of time is likely to violate Article 3, although the Spit and Bite Guards currently used by the PSNI are relatively easy to see through, however they are not transparent and do restrict vision and the connection the suspect has to the outside world.⁶⁸

Article 3: No one shall be subject to torture or to inhuman or degrading treatment or punishment.

Article 3 provides an absolute guarantee of the rights it protects, it is not subject to restrictions based on the public interest (even in relation to fighting terrorism or saving lives); it cannot be derogated from even in time of war or any other public emergency⁶⁹ and; it is not subject to any limitations or to interference based proportionality assessments.

Torture

Article 3 contains a number of prohibitions which need to be dealt with in turn. The use of a Spit and Bite Guard by a PSNI officer is never likely to constitute torture on its own. Torture has been defined as the 'deliberate inhuman treatment causing very serious and cruel suffering'.⁷⁰

Inhuman treatment

For something to constitute inhuman treatment, the treatment must cause 'either actual bodily injury or intense physical or mental suffering'.⁷¹ Again the use of a Spit and Bite Guard is unlikely cross to that threshold unless the suspect is in a particularly vulnerable group (see below).

67 The European Commission of Human Rights found, in the case of Ireland v UK, that the 'Hooded Men' had been subjected to torture. The subsequent case in the European Court of Human Rights found however a violation of the other provisions of Article 3 but not torture. However, more recently the Court of Appeal (which included the Lord Chief Justice) in Northern Ireland did not dispute the approach of the High Court which stated:

'...that the Convention is a living instrument and falls to be interpreted in the light of present day conditions. If the events here at issue were replicated the ECtHR would probably accept their description as torture. The proscription of torture is viewed as a peremptory norm from which the state cannot deviate. This supports the view that this case has a larger dimension than an ordinary criminal offence and would amount to the negation of the very foundations of the Convention. Accordingly the judge concluded that the Convention values test was satisfied.' Hooded Men, Court of Appeal, 20 September 2019, para. 44.

'We are satisfied that the treatment to which Mr McGuigan and Mr McKenna were subject would if it occurred today properly be characterised as torture bearing in mind that the Convention is a living instrument.' para 116

This case was then appealed to the Supreme Court and judgment was given on 15th December 2021.

68 On sensory deprivation and Article 3 see *Lorse v Netherlands* para 63, *Ensslin, Baader and Raspe v Germany*, and *Messina v Italy (No2)*, and *Ocalan v Turkey (GC)* para 183.

69 ECHR, Article 15.

70 ECtHR, *Ireland v UK*.

71 *Kudla v Poland (GC)*, para 92. In this report, references to other authorities in all of the quotes from the ECtHR and all cross references have been removed for the sake of simplicity

Inhuman or degrading punishment

The use of a Spit and Bite Guard as any kind of punishment regardless of the behaviour of the suspect would both be unlawful under domestic law and would violate these Human Rights prohibitions.

Degrading treatment

Treatment qualifies as degrading if it debases an individual or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, and even in the absence of any actual bodily injury or intense physical or mental suffering. Any conduct or treatment that intends to humiliate or debase, and treatment that does humiliate or debase even without this being its purpose, can violate Article 3.⁷² A full head covering such as a Spit and Bite Guard will be inherently humiliating, even if this is not its purpose and will require particular explicit justification.

In the case of *Kudla v Poland* the ECtHR stated:

'Treatment has been considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his will or conscience. Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.'⁷³

More recently the ECtHR in the case of *Bouyid v Belgium* considered in detail the concept of "dignity" as part of the assessment of the meaning of degrading treatment in Article 3, taking note of the inclusion of the concept of dignity in the Preambles or all the UN's Human Rights treaties:

- UN Charter itself,
- The Universal Declaration of Human Rights,
- International Convention on the Elimination of All Forms of Racial Discrimination,
- International Covenant on Civil and Political Rights (the UN version of the ECHR)
- International Convention on the Elimination of All Forms of Discrimination of Women,
- United Nations Convention Against Torture
- United Nations Convention on the Rights of the Child

72 *Ananyev v Russia* 2012.

73 (GC) 2000, para 92 and see *Jalloh v Germany* 2006, para 68.

- the International Convention for the Protection of All Persons from Enforced Disappearance,
- United Nations Convention on the Rights of Persons with Disabilities
- and many other such treaties.⁷⁴

All of these treaties have been signed and ratified by the United Kingdom. The United Nations Convention Against Torture, Cruel and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) provides similar provisions than those set out in Article 3 of the ECHR (as does the International Covenant on Civil and Political Rights [ICCPR] in Articles 7 and 10). The UN Committee, created by the UNCAT has decided that even if 'the infliction of pain or suffering which does not reach the threshold of "severe" must be considered as degrading treatment if it contains a particularly humiliating element.'⁷⁵

The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in one of its last official inspections of police custody stated that:

'The CPT considers that 'spit helmets', 'ERBs (restraint)' and 'velcro-/fixation straps', especially when used in combination, are not appropriate in a secure place of safety, such as police custody.'⁷⁶

The Grand Chamber⁷⁷ of the European Court of Human Rights based its leading judgment on the concept of dignity (as defined by the other Human Rights treaties, see above) and how that might assist in the assessment of the use of force of a person already detained and in the context of the threshold for inhuman or degrading treatment as decided by the previous authorities in Strasbourg:

"87. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3. It should also be pointed out that it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others...

74 Para 46.

75 The United Nations Convention Against Torture and its Optional Protocol: A commentary, 2nd ed., Manfred Nowak, Moritz Birk and Giuliana Monina, OUP, 2019, page 444.

76 Paragraph 15 of Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 12 April 2016.

77 The Grand Chamber (GC) deals with the most serious cases and sets out the most important Guidance and functions in a similar way to the Supreme Court of the UK or Ireland.

90. Moreover, there is a particularly strong link between the concepts of “degrading” treatment or punishment within the meaning of Article 3 of the Convention and respect for “dignity”... The Court, for its part, made its first explicit reference to this concept in the Tyrer judgment, concerning not “degrading treatment” but “degrading punishment”. In finding that the punishment in question was degrading within the meaning of Article 3 of the Convention, the Court had regard to the fact that “although the applicant did not suffer any severe or long-lasting physical effects, his punishment – whereby he was treated as an object in the power of the authorities – constituted an assault on precisely that which it is one of the main purposes of Article 3 to protect, namely a person’s dignity and physical integrity”. Many subsequent judgments have highlighted the close link between the concepts of “degrading treatment” and respect for “dignity”.⁷⁸

Applying these principles to the facts of the case the Grand Chamber concluded:

“Any interference with human dignity strikes at the very essence of the Convention. For that reason any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question.”⁷⁹

“105. The Court reiterates that it may well suffice that the victim is humiliated in his own eyes for there to be degrading treatment within the meaning of Article 3 of the Convention (see paragraph 87 above).

106. That is particularly true when the slap is inflicted by law-enforcement officers on persons under their control, because it highlights the superiority and inferiority which by definition characterizes the relationship between the former and the latter in such circumstances. The fact that the victims know that such an act is unlawful, constituting a breach of moral and professional ethics by those officers and – as the Chamber rightly emphasised in its judgment – also being unacceptable, may furthermore arouse in them a feeling of arbitrary treatment, injustice and powerlessness...”

In the case of *Petyo Petkov v Bulgaria* the ECtHR found a violation of Article 3 as a result of a person who had been forced to conceal his face with a balaclava whenever he had left his cell over a period of one year and one month. The police officers’ arbitrary conduct in continuing to conceal the applicant’s face outside the courtroom despite the district court’s decision might have been perceived by him as a form of punishment. This punitive element had aroused in him feelings of anxiety, powerlessness and inferiority that were liable to debase him or lower his self-esteem.

78 Paras 87, 88 and 90. References to other authorities in this quote and cross references were removed for the sake of simplicity.

79 Para 101.

Accordingly, having regard to the duration and nature of its application, its lack of a legal basis, its arbitrariness and punitive character, the psychological effects of the measure in question had gone beyond the threshold of severity required for Article 3 to apply and the applicant had been subjected to degrading treatment.

VULNERABLE SUSPECTS

The Court has concluded that the threshold for violation of Article 3 is as follows:

'Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim. Further factors include the purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it, although the absence of an intention to humiliate or debase the victim cannot conclusively rule out a finding of a violation of Article 3. Regard must also be had to the context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions.'⁸⁰

There are special protections that apply to anyone with vulnerabilities set out in the UN Convention on the Rights of People with Disabilities (CRPD) (ratified by the UK and including the additional right to make complaints against the UK to the UN's CRPD Committee).⁸¹ Article 15(2) to that treaty states:

'States parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.'

The expert commentators suggest:

'There are in fact several good reasons that suggest the need for a special approach to torture and other cruel, inhuman, or degrading treatment or punishment in the cases of persons with disabilities and, thus the added value of a provision to this effect in the context of the CRPD.'

In the first place, as to the degree of suffering required for a specific treatment to reach the threshold of torture or of other internationally prohibited ill-treatment may vary depending on the circumstances of the individual victim, disabilities are to be taken into account in establishing whether either of the two situations has arisen.'⁸²

80 Grand Chamber, para 86. Emphasis added.

81 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.' Article 1 of the CRPD.

82 The United Nations Convention on the Rights of Persons with Disabilities: A Commentary, Valentina Della Fina and others, 2017, Springer, page 309.

So it is clear that whether the use of force (and therefore any restraint including a Spit and Bite Guard) is a violation of the prohibition on degrading treatment depends on the nature of the detainee (including disability, mental or physical health issues, age, and other possible vulnerabilities). In the circumstances of a police arrest or in custody, it may not be known to the police officers whether the person has any mental health issues or vulnerabilities. It is therefore very difficult for those officers to assess the effect on a person of a Spit and Bite Guard and ensure they are not used on people with mental or physical health issues or any other specific vulnerabilities.

For instance, the application of a Spit and Bite Guard to a person with a mental health condition or personality disorder is likely to exacerbate the distress experienced by that person and may result in for example hyperventilation, extreme behaviour and panic attacks. An officer, not aware of these particular issues or not making inquiries about such vulnerabilities that were reasonable in the circumstances is clearly at risk of violating Article 3.

Furthermore, by obscuring a detainee's face, officers are prevented from identifying whether the detainee has laboured breathing, is choking or has suffered a facial or head injury. Conversely, the current alternative to the use of a Guard to protect police officers from spitting or biting, is to restrain the head. Neither option is particularly satisfactory but other possible alternatives are set out on page 70..

Children and Young People

There are particular concerns about compliance with the United Nations Convention on the Rights of the Child (UNCRC). In particular, the duty to act in the best interests of the child (Article 3) and the prohibition against ill-treatment in the UNCRC itself (Article 37). It is difficult to see how the use of a Spit and Bite Guard will ever be in the interests of a child and so the Guidance should be amended to set out the circumstances where this might be true.

Finally, of course, children may also be additionally vulnerable as a result of physical or mental health issues (or following the use of drink or drugs).

RECOMMENDATION 3

It is difficult to see how the use of a Spit and Bite Guard will ever be in the interests of a child and therefore the Guidance should be amended to set out the circumstances where this might, possibly, be true.

USE OF FORCE BY POLICE OFFICERS

'If the use of force is not necessary and in the specific circumstances of the case not proportional with the purpose achieved, it amounts to cruel or inhuman treatment. Once a person is powerless and has lost the capacity to resist or escape the infliction of pain or suffering the proportionality is no longer applicable.'⁸³

The use of any force or a restraint once a person has been 'detained' is only justified in certain particular circumstances.⁸⁴ Persons in custody are obviously in a vulnerable situation.⁸⁵ The ECtHR has said:

'The Court emphasises that, in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. It reiterates that the requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals.'⁸⁶

And in the same case:

73. The Court observes that the applicant did not complain of physical violence but of degrading treatment in the course of his arrest which had consisted in the manner of his handcuffing and his exposure in handcuffs to the hospital staff, patients and third persons during his arrest and the search of his car at the hospital car park. The alleged degrading treatment further consisted in the filming of the applicant's arrest by the CAB officer and making available to the media the recording of his arrest.

74. The Court recalls that handcuffing does not normally give rise to an issue under Article 3 of the Convention ("degrading treatment") where the measure has been imposed in connection with lawful arrest or detention and does not entail use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or abscond, cause injury or damage or suppress evidence.⁸⁷

and

83 Comment on the UN Convention in *The United Nations Convention Against Torture and its Optional Protocol: A commentary*, 2nd ed., Manfred Nowak, Moritz Birk and Giuliana Monina, OUP, 2019, page 443.

84 *Svinarenko and Slyadnev v Russia* (GC) para 133 and *Gorodnitchev v Russia*, 102-108 (French only).

85 *Salman v Turkey*, para 99 and see *Ocalan v Turkey* (GC) paras 182 and 191.

86 *Ribitsch v Austria*, para 38, see also *Yankov v Bulgaria*, para 117.

87 *Miroslaw v Poland*, paras 73-75. See also *Ilascu v Moldova & Russia*, para 432

'55. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct. In order to fall within the scope of Article 3, the ill-treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.

Furthermore, in considering whether a punishment or treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. In this connection, the public nature of the punishment or treatment may be a relevant factor. At the same time, it should be recalled, the absence of publicity will not necessarily prevent a given treatment from falling into that category: it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others.

56. As regards the kind of treatment in question in the present case, the Court is of the view that handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful arrest or detention and does not entail use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or abscond, cause injury or damage or suppress evidence.

57. The handcuffing of Mr Raninen had, as conceded by the Government, not been made necessary by his own conduct. Apart from the fact that the measure was itself unjustified, it had been imposed in the context of unlawful arrest and detention. In addition, he had, albeit only briefly, been visible to the public on his entering the military police vehicle outside the prison gate. He claimed that he had felt humiliated by appearing handcuffed in front of members of his support group.'⁸⁸

Once restrained

If police officers have taken control of a suspect so that a Spit and Bite Guard can actually be placed on that person – as they are advised by the Guidance to do - then in most cases that person will be no longer be able abscond or assault officers or members of the public. At that point, the justification for the use of further force and the use a Spit and Bite Guard may have disappeared. Certainly, a new assessment will need to be made and the need to assess the likelihood of further attempts to spit or bite or threats to officer safety. However, not only will suspects have been restrained (PSNI Guidance advises suspects being handcuffed behind his or her back⁸⁹) but suspects will not be able to move or adjust the Spit and Bite Guard to make it more comfortable.

⁸⁸ Raninen v Finland.

⁸⁹ 16.40.

The five randomly selected BWVs recording the use of Spit and Bite Guards viewed by the Human Rights Advisor and Policing Board staff are instructive in understanding the processes.⁹⁰ In all of the examples viewed the suspect had been restrained and was under control by three or more officers. In all the examples, at that point the officers could have moved away from the restrained suspect instead of using the Guard and no one would have been in danger of being spat at or bitten. At this point de-escalation techniques could have been used and, at the very least, a pause in the use of force would have allowed everyone, including the suspect to calm down.

From a Human Rights perspective, and as outlined above, the absolute nature of the provisions of Article 3 and the assessment of the use of a Guard as degrading makes any use of force at this point more problematic. The Human Rights Advisor's assessment is that the videos reviewed raise questions about the extent to which the Guidance complies with Article 3 regardless of whether or not the officers were following that Guidance. Of course, the law of Northern Ireland, reflecting the provisions of the Human Rights Act and Article 3, also raises questions about the lawfulness of the Guidance in relation to the use of force.

The fact that the use of Spit and Bite Guards make it easier to control a suspect is unlikely to provide a justification in itself, particularly given the fundamental nature of Article 3. This is an even more important consideration if the suspect is already in a police vehicle or police station where the risks to officers are reduced still further and the suspect can be allowed to calm down and de-escalation techniques can be tried. Any justification for the use of a Spit and Bite Guard in those circumstances will be even more unlikely.

It must be recognised however that police officers, at least under domestic law, can use force to ensure a suspect complies with their lawful orders. Generally, the suspect will need to be transported to the police station and, once there, be booked in by the Custody Officer and interviewed and charged. Nevertheless, such procedures are not necessarily so urgent as to require the use of a Spit and Bite Guard, without taking a moment to trying to de-escalate the situation. Without trying such alternatives, such action may be problematic as set above.

There will of course be pressures on officers to act: struggles to arrest and subdue a suspect in a public place can sometimes attract a crowd and officers may be under pressure to attend another incident or scene. However, such pressures need to be carefully balanced against the Article 3 considerations, carefully documented and the process and criteria set out in amended Guidance.

90 Note: viewing the Body Worn Video of five randomly selected examples of the use of Spit and Bite Guards was undertaken to understand the difficult issues confronting officers. Unlike the review by the Police Ombudsman, there was no assessment made of any conduct issues or individual police officers' compliance with the Guidance. However, the samples raised issues about the Guidance, current PSNI policy, and the extent to which it assists officers in complying with the principles of Article 3 and human rights law. For similar reasons the report by the Ombudsman and in this report raise different issues and this report focuses specifically on the principles and jurisprudence of Article 3 rather than officer compliance.

ARTICLE 14: INDIRECT DISCRIMINATION

Evidence that any group of people (on the basis of their sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property birth or other status) is subjected to interference with their other rights more than equivalent others, is unlawful, unless there is an evidence-based, objective and reasonable justification for this.⁹¹ It is unlawful regardless of the absence of intentional discrimination. Unlawful discrimination under Article 14 does not require any other right to have been violated, only that the other right is engaged.

Therefore, if the evidence is that a disproportionate number of people from one religion, national or social origin, national minority political group were subject to Spit and Bite Guards this would be unlawful – unless that difference can be objectively justified, and its justification is a legitimate one. In the leading case of *DH v Czech Republic*, the Grand Chamber of the European Court of Human Rights set out the following principles in relation to Article 14⁹²:

‘175. The Court has established in its case-law that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations.

...The Court has also accepted that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group, and that discrimination potentially contrary to the Convention may result from a *de facto* situation.

177. As to the burden of proof in this sphere, the Court has established that once the applicant has shown a difference in treatment it is for the Government to show that it was justified.

178. As regards the question of what constitutes prima facie evidence capable of shifting the burden of proof on to the respondent State, the Court stated in *Nachova and Others* (cited above, § 147) that in proceedings before it there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. The Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake.

91 *DH and Others v Czech Republic*.

92 References to other cases in this quote have been omitted for simplicity.

180. As to whether statistics can constitute evidence, the Court has in the past stated that statistics could not in themselves disclose a practice which could be classified as discriminatory. However, in more recent cases on the question of discrimination in which the applicants alleged a difference in the effect of a general measure or *de facto* situation, the Court relied extensively on statistics produced by the parties to establish a difference in treatment between two groups (men and women) in similar situations.

Thus, in *Hoogendijk* the Court stated: “[W]here an applicant is able to show, on the basis of undisputed official statistics, the existence of a prima facie indication that a specific rule – although formulated in a neutral manner – in fact affects a clearly higher percentage of women than men, it is for the respondent Government to show that this is the result of objective factors unrelated to any discrimination on grounds of sex. If the onus of demonstrating that a difference in impact for men and women is not in practice discriminatory does not shift to the respondent Government, it will be in practice extremely difficult for applicants to prove indirect discrimination.”

184. The Court has already accepted in previous cases that a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group.

186. As mentioned above, the Court has noted in previous cases that applicants may have difficulty in proving discriminatory treatment. In order to guarantee those concerned the effective protection of their rights, less strict evidential rules should apply in cases of alleged indirect discrimination.

188. In these circumstances, the Court considers that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce. This does not, however, mean that indirect discrimination cannot be proved without statistical evidence.

189. Where an applicant alleging indirect discrimination thus establishes a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden then shifts to the respondent State, which must show that the difference in treatment is not discriminatory. Regard being had in particular to the specificity of the facts and the nature of the allegations made in this type of case (*ibid.*, § 147), it would be extremely difficult in practice for applicants to prove indirect discrimination without such a shift in the burden of proof.

196. The Court reiterates that a difference in treatment is discriminatory if “it has no objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality” between the means employed and the aim sought to be realised.’

These principles clearly demonstrate that the onus is now on the PSNI to provide an objective justification for any difference irrespective of the less than perfect nature of the statistics. To fail to do so creates a prima facie violation (which may also be unlawful under domestic law).

There is also a separate and more difficult question which concerns the circumstances of ‘hooding’ by the state and its history in Northern Ireland which will objectively affect some members of one community in a different, and probably more significant, way than others. If the evidence is that same community is more likely than others to be subject to a Spit and Bite Guard this creates even more significant difficulties for their continued use.

The PSNI's EQIA stated that 84 individuals had be subjected to a Spit and Bite Guard up to 31 December 2020 of whose religion was recorded, 40 individuals identified as Roman Catholic (48%). Those who identified as Protestant accounted for only 20% (there was a sizable number of those whose religion was not recorded). However, until such time as the reasons and/or justification for this difference in treatment are clear then the use of Spit and Bite Guards should cease because it is, prima facie, unlawful.

SUMMARY

The current procedures for the use of Spit and Bite Guards are inadequate and many of the deployments may be unlawful under the Human Rights Act because:

- (a) Once restrained and no longer a threat (including once in the custody suite) the deployment of a Spit and Bite Guard is, prima facie, unlawful. Police officers are entitled to use force to ensure compliance with lawful orders but other alternatives, including de-escalation and disengagement and time for calming, need to be seriously considered.
- (b) Transport arrangements, including more availability of ‘cell vans’ or screens in other vehicles to move suspects without the necessity of officers being within spitting distance need to be considered.
- (c) Urgent consideration needs to be given to the disproportionate numbers of Catholics subject to Spit and Bite Guards. Currently the lack of any research by PSNI and no objective justification makes their continued use a violation of Article 14 combined with Article 3.

As the European Court of Human Rights has stated it is a violation of the Convention when force:

'... is inflicted by law-enforcement officers on persons under their control, because it highlights the superiority and inferiority which by definition characterise the relationship between the former and the latter in such circumstances.'⁹³

RECOMMENDATION 4

A more detailed assessment of the law and the Human Rights requirements in relation to the use of Spit and Bite Guards should be set out in the Guidance and provided in the training of officers for their use and this should include the requirement to consider alternatives.

93 Bouyid v Belgium, para 106.

CHAPTER 4

SAFEGUARDS AND PROTECTIONS

TRAINING AND GUIDANCE

PSNI have stated that the Spit and Bite Guard training course is currently a mandatory online training video detailing the use and deployment of a Guard and the possible medical implications relating to their use, that must be completed by all officers and staff authorised to carry a Spit and Bite Guard. With a gradual return to face-to-face Personal Safety Programme (PSP) training, officers and staff receive a physical input on the use of Spit and Bite Guards, but are still required to complete the online training package and read Chapter 16 of the Conflict Management Manual, "The Use of Spit and Bite Guards". A re-launch of the training package in January 2022 will require officers and staff to complete training again. In the Board's Human Rights Annual Report 2020/2021, the Board made the following recommendation;

'Within the restrictions that the COVID-19 pandemic has brought to the training/classroom environment and the Board's stated position that the use of Spit and Bite Guards should cease, it is recommended that if Spit and Bite Guards are proposed for permanent use by the Chief Constable, a Spit and Bite Guard practical element should be considered/introduced within the annual operational personal safety programme {PSP} refresher for officers designated to use the Guards in order to provide further reinforcement on their use, subject welfare and possible medical considerations. It is also recommended that future training on Spit and Bite Guards, if introduced, be carried out face to face rather than only online'.⁹⁴

PSNI note that the Guidance and training on the use of Spit and Bite Guards has evolved since the temporary introduction of the tactic in March 2020. In response to engagement with partners, internal consultation and discussion with the Policing Board's Human Rights Advisor, advice from the Police Ombudsman and the EQIA consultation, PSNI state that the following amendments have been made:

- The insertion of a section on Human Rights;
- Special consideration to be given to the vulnerabilities of children and mental health factors;
- References to Acute Behavioural Disturbance;
- A verbal warning prior to application of the Guard;
- Alternatives to a Spit and Bite Guard to include de-escalation techniques and the donning of PPE;
- A stronger message around the use of BWV and supervision of the subject;
- Emphasis on the Guard as a single-use item to be used on one subject;

94 [Human Rights Annual Report 2020/21 \(nipolicingboard.org.uk\)](https://www.nipolicingboard.org.uk)

- A more realistic training video to show an aggressive subject; and
- Most significantly, a change in Guidance terminology on the use on children and vulnerable people.

However, the more detailed analysis set out in this report in relation to Human Rights, prior restraint, de-escalation, other alternatives and safeguards may require review and amendments to both the Guidance and the training provided.

In her Review of the deployment of Spit and Bite Guards, the Police Ombudsman found that a significant percentage of the potential misconduct identified by the Police Ombudsman's investigation have been instances of non-compliance with the training requirement on the deployment of Spit and Bite Guards. Enquiries conducted by Police Ombudsman staff identified that, as of 24 March 2021, a total of 2,444 officers had completed the online training course. It was believed that around 4,500 officers would have been eligible for this training. The Police Ombudsman expressed a concern to understand the reasons for the low level of uptake and completion of the mandatory training. The Police Ombudsman has recommended that, as a priority, consideration be given to implementing a deadline date for the training to be completed by eligible officers/staff. Depending on all of the circumstances, the officers/staff who do not undertake the mandatory training may be subject to conduct/management measures under the Police (Performance and Attendance) Regulations (Northern Ireland) 2016. It was also the Ombudsman's view that there are no circumstances in which an untrained officer should be in possession or have access to a Spit and Bite Guard.⁹⁵

PSNI have stated that the total number of officer/staff trained in the use of Spit and Bite Guards on 25th November 2021 was 3,912, leaving approximately 36 eligible officers across all Districts, to complete the current online training course at that time. Whilst this is a significant improvement in the take up of the training overall, PSNI statistics have shown that there have been 15 occurrences where Spit and Bite Guards were used and the Officer was not trained, happening as recently as 29 August 2021. The statistics show that there was a large increase in officers using the Guards untrained in 2021, after the roll out to all officers. Of the incidents where an officer was untrained, three of these were applied to a 16 year old and all of which were incidents that were solely related to mental health. Four of the incidents where the officer was untrained and applied a Guard, the Guard was kept on the individual between 55-104 minutes, again mental health being an issue in all of these occasions. Given the concerns set out previously in this report surrounding the negative impacts of applying a Spit and Bite Guard, particularly on individuals with mental health issues, it is extremely worrying that an officer would apply a Guard and keep it on for a significant length of time whilst not being trained in how to do this safely.

⁹⁵ <https://www.policeombudsman.org/getattachment/Media-Releases/2021/Review-of-Spit-and-Bite-Guards-identifies-concerns/Spit-and-Bite-Guard-Report-Oct-2021.pdf>

In the PSNI Guidance at 16.2, under 'who can apply a Spit and Bite Guard?' it states that 'All Police Officers/Civilian Detention Officers applying a Spit and Bite Guard must complete the appropriate training prior to being issued with a Spit and Bite Guard by their Supervisor.'

RECOMMENDATION 5

The wording of the Guidance should be strengthened to deter any officer from using a Guard if they have not been recently trained to do so.

The Guidance highlights at 16.24 that 'Consideration should be given to subjects who have been sprayed with CS or PAVA as they may be suffering the effects of the irritant.' From PSNI statistics as at 30 November 2021, there have been 23 instances where a Guard was applied and PAVA was also used or drawn. In April 2021, the IOPC made a recommendation to the Sussex Police Force following an investigation where a physically resistant detainee had been sprayed with Captor spray and placed in handcuffs and a Spit and Bite Guard. Whilst the male detainee had been physically resistant initially, there was no suggestion that he was deliberately spitting at officers. After ten minutes he became compliant and the spittle he produced appeared to be as a direct result of being subjected to the incapacitant spray. It was considered likely that the Spit and Bite Guard became contaminated with the incapacitant spray and lengthened the effects of the spray by keeping it in close proximity to the male's face, making him continue to produce spittle. The male was then taken to a cell, whilst still wearing the Spit and Bite Guard and which was only removed once inside the cell. No specific aftercare was provided, except removing him from the area where the incapacitant spray had been discharged and wiping his face with some tissue. The Sussex Police Force Guidance at that time did not specifically consider the use of a Spit and Bite Guard after an incapacitant spray has been used, nor any aftercare to be considered in such instances.

After accepting the recommendation, the Sussex Guidance was strengthened to reflect the following;

'Following exposure to Incapacitant Spray a subject may cough and spit to clear residue of the spray from their mouth. The officer will need to determine whether the subject is spitting at someone, or merely trying to clear the taste from their mouth prior to applying the Spit Guard.

Where the Spit Guard is applied after the subject has been exposed to Incapacitant Spray there is the potential for the Spit Guard to 'trap' the product against the face of the subject and lengthen the effects. Consideration should be given to the replacement of the contaminated Spit Guard with a new Spit Guard if continued use is required. Rationale for any such replacement should be documented. Where the Spit Guard has been applied to a subject after they have been exposed to Incapacitant Spray the subject must be closely and constantly monitored and the Spit Guard removed where any sign of breathing difficulty becomes apparent.'⁹⁶

96 <https://policeconduct.gov.uk/recommendations/recommendations-sussex-police-april-2021>

In comparison the PSNI Guidance does not appear to set out sufficient safeguards regarding PAVA use and Spit and Bite Guards.

RECOMMENDATION 6

The Guidance should be strengthened to recognise the dangers illustrated by the Sussex case in regard to the use of PAVA (pepper spray) and Spit and Bite Guards.

The Police Ombudsman also recommends that police provide clear Guidance regarding what is meant by 'single use' and this Guidance should be communicated to all officers. Furthermore, PSNI should consider updating the relevant training and practical examples of what 'single use' means for the purposes of officer training. These training and Guidance updates should ensure that operational officers fully understand the circumstances in which a new Spit and Bite Guard should be applied.

When the Board's Human Rights Advisor reviewed Body Worn Video of the Guard's deployments he identified the same issue, there was an occurrence where the same mask was applied twice to the one individual. PSNI informed the Police Ombudsman that the Guidance will be amended to define 'single use' more clearly, however at 16.29 the Guidance already states '*the Guard is a single-use item which must be discarded if it becomes damaged or soiled.*'

RECOMMENDATION 7

The Guidance needs to reinforce the importance of the Guard being single-use. This should also be reflected in the training videos and face to face learning.

RECOMMENDATION 8

The previous training video for officers shows an individual actor subject to a Spit and Bite Guard who appears to be completely compliant. As a Spit and Bite Guard is a use of force and should be only be applied when 'absolutely necessary' the person to whom the Spit and Bite Guard is being applied is very likely to be actively resisting and/or being aggressive towards police. The training now appears to be unrealistic and needs updated.

RECOMMENDATION 9

The training that officers receive on Spit and Bite Guards should be more comprehensive and repeated, at least, annually. It should be more extensive than the current training available and the implications of the use of force for Human Rights should be at the centre of such training.

USE OF FORCE

In the PSNI Guidance, at 16.4, the application of a Spit and Bite Guard is described as 'a use of force and must be recorded as such'. The Guidance notes that its use should be carefully assessed using the National Decision Model (NDM) and service Guidance. The justification for its use remains with the person applying it. At 16.49 the Guidance states;

'Monitor the subject at all times. Make sure you constantly reassess the need for the Spit and Bite Guard and keep it in place only as long as necessary.'

The wording 'as long as necessary' is vague and does not take into the consideration the dangers of an individual having a Guard on for a significant period of time and the fact that any original justification for its use is likely to disappear over time. In the PSNI statistics provided to the Board, the length of time a Guard was in place was not recorded by PSNI until the September 2020, except on two occasions. After September 2020, the figures from PSNI disclosed that there were 37 instances where the Guard was kept on an individual for between 40-114 minutes and on ten occasions the Guard was applied for 120+ minutes. After '120+ minutes' the actual length of time in minutes is not broken down, therefore the longest amount of time an individual has had a Guard applied is unknown. In the instances where the Guard was applied for more than 120 minutes, one of the individuals was 16 years old and in over half of these incidents the mental health of the suspect was flagged. Therefore, from the wording of the Guidance alone it is difficult to understand how the need for a Spit and Bite Guard could have been constantly reassessed and could have been regarded necessary for 120+ minutes, particularly when vulnerabilities of age and mental health had been established. This raises questions about the actual compliance with the policies set out in the Guidance and to question the extent of the de-escalation techniques used in practice by the officers.

When reviewing the BWV of the use of Spit and Bite Guards, the Human Rights Advisor identified an example when an individual had a Spit and Bite Guard applied as a result of a drugs related incident and by the time the individual arrived in custody he appeared unconscious. The officers proceeded to take off his Guard and try to wake the individual. As the individual did not wake up, it was decided by the officers to take him to hospital. Despite the individual being unconscious, the officers appeared to apply the same Guard (despite the Guidance stating they are single-use) and kept it on as they escorted him to hospital.

This also calls into question the Guidance surrounding previous instances of spitting or biting. The Guidance states that previous instances will not provide justification for its use in isolation but combined with preparing or threatening to spit or bite may provide justification.

RECOMMENDATION 10

An individual who has spat or bitten, but has since calmed down or is now unconscious, should not have the Guard reapplied and the Guidance should reflect this. The Guidance should also provide more detail on how to reassess the continuing need for the Guard and how long a Guard should typically stay on for.

It is obviously understood that the context for each application of a Guard is unique and will need to be assessed by the individual officer, however providing greater safeguards and rules in the Guidance will protect both the subjects and the officers applying the Guard.

At 16.48 the Guidance states,

‘Following a struggle, excessive exertion or where Acute Behavioural Disturbance is suspected, the subject may be less able to tolerate the Spit and Bite Guard, and this should be taken into account by the officers.’

The phrase ‘following a struggle or excessive exertion’ could cause confusion for officers. Obviously, following a forceful struggle, applying a Guard may make it more difficult for the individual to breathe normally. However, as previously stated, as the Guard is a use of force, it is only necessary when an individual is showing force and is a threat to the officer. Most instances of a Guard’s deployment will typically follow a ‘struggle or excessive exertion’. If an individual is not struggling and forcefully resisting arrest, then a Spit and Bite Guard should not be used. Therefore, the wording at this part of the Guidance is counterintuitive and calls into question the safety of applying a Guard, as if the PSNI have acknowledged that following ‘excessive exertion’ a subject may be less able to tolerate a Guard, then this will typically apply to every deployment of a Guard.

The PSNI have noted previously that ‘in the absence of Spit and Bite Guards, Police may be required to use physical restraint in dealing with people who are spitting or biting.’ The PSNI suggest that this could increase the likelihood of the subject sustaining injuries and that Spit and Bite Guards are a lesser use of force. However, there appears to be insufficient evidence to show that the use of Spit and Bite Guards has decreased the level of restraint needed prior to their introduction.

The PSNI Guidance states that:

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

and

16.40 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.

This may leave the incorrect impression that Spit and Bite Guards significantly reduce the level of physical restraint that was applied prior to their introduction.⁹⁷ This was certainly not borne out by the BWV samples viewed by the Human Rights Advisor.

In information provided by PSNI to the Performance Committee regarding duty adjustments, it was disclosed that a PSNI officer has been repositioned due to a complaint of excessive force in applying a Spit and Bite Guard. In her review, the Police Ombudsman found that signs of visible aggression and poor behaviour by officers. In 41% of those reviews, Police Ombudsman investigators reverted to the Professional Standards Department with concerns about the deployment. A further 13% of reviews resulted in either a Chief Constable referral to the Police Ombudsman or the Police Ombudsman made the decision to commence an own motion investigation. Of the 28 reviews that resulted in concerns for resolution by PSNI there were 52 concerns identified. These figures do not include any concerns that might arise out of the 9 reviews being dealt with as either a Police Ombudsman 'Own Motion' decision or Chief Constable Referral.

The Police Ombudsman stated that the video evidence demonstrated a number of officers whose conduct contributed to escalation rather than de-escalation. The review highlighted a number of instances that caused concern and the Ombudsman noted that if a wider trend in the use of force is established, reversing this current cultural change will take time and commitment from the senior leadership of PSNI.⁹⁸

ALTERNATIVES TO SPIT AND BITE GUARDS

Both the PSNI itself, the Police Federation and individual officers have responded to the Policing Board's consideration of the deployment of Spit and Bite Guards by asking what the alternatives might be. This is a very important challenge and echoes the obligation to protect police officers who are subjected to very unpleasant and insulting behaviour.

Alternatives to using Spit and Bite Guards are already set out in the PSNI's Guidance and do not involve additional restraint. At 16.20 the Guidance states:

'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 subject in a cell van and keeping under observation.'

⁹⁷ <https://caj.org.uk/wp-content/uploads/2021/05/Response-to-the-PSNI-consultation-and-EQIA-on-the-temporary-use-of-spit-and-bite-Guards.pdf>

⁹⁸ <https://www.policeombudsman.org/PONI/files/93/93f9e0e4-2b03-4162-9923-7a1f56589527.pdf>

With regards to the reference to 'donning additional personal protective equipment', the Board's Thematic Review of the PSNI's response to Covid-19 recommended that Guards could not be regarded as PPE and effective PPE authorised as such should be used instead. Whilst it appears to be agreed that PPE should be used by front line officers as a protective measure before applying a Spit and Bite Guard, it is unclear how far this is encouraged by senior officers or in the training, as in the BWV footage reviewed by the Human Rights Advisor there appeared to be no instances where this was applied. At 16.31 the Guidance states that officers applying the Guard should:

'Keep your hands away from the subject's eyes and mouth and, if practicable, wear protective gloves to avoid the risk of fluid transfer.'

Again, this was not something that was seen in any of the BWVs.

RECOMMENDATION 11

Where the Guidance refers to putting on gloves and Personal Protective Equipment (PPE) more emphasis needs to be put on this as the first action to take if someone is spitting or biting, rather than using force and applying a Guard. It is recommended that the Guidance and training reflects this and gives officers the practical training they need in moving away from the threat and putting on PPE. The Police Ombudsman also recommended that police circulate a reminder to all relevant officers staff to remind them of their responsibility to wear PPE and its importance.

DE-ESCALATION

De-escalation and disengagement are, perhaps, the most practical alternatives to the use of Spit and Bite Guards. These alternatives, already mentioned in the Guidance should be made much clearer, because they could reduce any risk to officers of contracting blood borne viruses from spit/bite incidents, and the serious risk of contracting COVID-19 from aerosol particles. These alternatives will also reduce the risk of harm to suspects (particularly children and people with disabilities) that a Guard creates – and, of course, reduce the risk of Article 3 violations.⁹⁹ The NIHRC recommends that PSNI officers are trained in de-escalation techniques as an alternative to Spit and Bite Guards. Given that the EQIA identifies that most Spit and Bite Guards are used on young males, NIHRC also suggests that a neurobiological element to the training would be useful.¹⁰⁰

99 <https://caj.org.uk/wp-content/uploads/2021/05/Response-to-the-PSNI-consultation-and-EQIA-on-the-temporary-use-of-spit-and-bite-Guards.pdf>

100 <https://nihrc.org/uploads/publications/NIHRC-Spit-and-Bite-Guards-Submission.pdf>

De-escalation can be defined as a reduction of the level of intensity of stress and tension in adverse circumstances, particularly in scenarios involving authorities with coercive power.¹⁰¹ It can be achieved through the employment of tactics that aim to reduce tension between individuals, as opposed to having to rely on physical control and force. Authorities, and the police in particular, have many legitimate reasons to ensure individuals are compliant. However, should there be any difficulty with compliance, de-escalation should be the starting point. Intermediate 'social bridges' like family members or others who the individual trusts should be used to encourage compliance. Furthermore, de-escalation provides an opportunity for the authority to consider whether the objective is necessary, as well as whether there are other alternative methods of achieving the original purpose, with the emphasis on ensuring effective and safe compliance for all involved.¹⁰²

Officers tasked with administering force should be adequately trained in de-escalation techniques to avoid the use of force wherever possible. The varying forms of de-escalation are underpinned by the notion that officers should be genuinely committed to minimising harm and avoiding violence where it is not absolutely necessary to use force.¹⁰³

In an inquiry in Australia into the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody in 2020, Justice Action set out a non-exhaustive of forms of de-escalation, as follows:

- increasing distance between individuals to allow for greater reaction time;
- using natural barriers to shield oneself;
- limiting engagement from non-involved community members; and
- clear verbal communication.

Communication includes the application of both verbal and non-verbal communication skills. Officers should, in aiming to de-escalate any conflict situation, use calm voices, and even communicate with a goal of negotiation rather than the employment of force. Effective communication involves engagement and trying to establish a connection with the other person.

Examples of effective communication skills in this context can include:

- calling the person by their name;
- asking open-ended and clarifying questions;
- taking steps to put the person at ease;

101 John Monahan et al., *Coercive Treatment in Psychiatry: Clinical, Legal and Ethical Aspects*, pp. 57-79 in *How To De-escalate a Risk Situation to Avoid the Use of Coercion* (Web Page, March 2011)

<https://www.researchgatenet/publication/230218830HowtoDe-EscalateaRiskSituationtoAvoidtheUseofCoercion>

102 Justice Action Australia, Deaths In Custody Team, Inquiry into the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody, 2020 <https://www.parliament.nsw.gov.au/lcdocs/submissions/69520/130%20Justice%20Action.pdf>

103 Victoria Police. (Melbourne, 2003) 'Victoria Police Manual', <https://www.police.vic.gov.au/policies-procedures-and-legislation#code-of-conduct>

- trying different approaches to making a connection; and
- explaining what is happening when taking steps to de-escalate the situation.

Although de-escalation techniques are thought to be widely employed in health and mental health care settings, its use in law enforcement is poorly defined.¹⁰⁴

An example of de-escalation training, as a part of the New York Police Department's (NYPD) Specialised Training, the Crisis Intervention Team Program (CIT) educates officers to de-escalate conflict through active listening, empathy, and influencing the person in crisis. By doing so, CIT training is intended to reduce the risk of injury for not only police officers, but for civilians as well. This four day training program relies heavily upon scenario-based training, where the stimulation of crisis situations trains officers to safely approach and communicate with those in crisis. Participants are also provided with mental health identification training, where clinicians teach officers to identify and learn how to respond best to particular mental health conditions. As a significant number of people have died due to poor de-escalation strategies, the CIT has placed greater emphasis upon communicating effectively to those who are "emotionally disturbed".¹⁰⁵ The NYPD's partnership with the New York Peace institute enables officers to be trained in "mediation, de-escalation and conflict resolution skills". By learning skills similar to those in hostage situations, officers can build meaningful relations with civilians to avoid future conflict. As a result, it is intended that then NYPD's de-escalation programs "will reduce the frequency and severity of police use of force".¹⁰⁶

Another example of de-escalation used in practice is the Birmingham Model in the UK, this is a system of mental health integrated policing used by the Birmingham Police where Community Service Officers are employed by the police force to assist police in responding to mental health crisis, as well as provide crisis intervention and follow up assistance. These CSOs are civilian police employees with qualifications of professional training in social work or related fields and as such play a vital role in de-escalating situations involving complex mental health crises. The effectiveness of this approach stems from the utilisation of highly trained mental health professionals whose sole goal in crisis situations is to de-escalate and prevent harm.¹⁰⁷

104 <https://www.parliament.nsw.gov.au/lcdocs/submissions/69520/130%20Justice%20Action.pdf>

105 Williams, 'Improving New York City's Responses to Individual in Mental Health Crises', New York City Public Advocate 2019, <https://www.pubadvocatenyc.gov/reports/improving-new-york-citys-responses-to-individuals-in-mental-health-crisis/>

106 New York Peace Institute, (New York Peace Institute 2018) Police Mediation Partnership <https://nypeace.org/police-training-partnership/>

107 <https://www.parliament.nsw.gov.au/lcdocs/submissions/69520/130%20Justice%20Action.pdf>

DISENGAGEMENT

Police officers are often called to situations involving conflict and violence or the threat of violence. Often they need to use force but there appears to be an expectation that they should take immediate control and make this clear to everyone present. This may often be a sensible technique, protect members of the public and create compliance in those who need to stop their actions or comply with directions. However, sometimes this tactic and the wider 'control culture' in the police service needs to be put on hold. De-escalation allows a consideration of wider objectives and can put the need to take physical control of people who are 'out of control' and transport them immediately to the vehicle or to the custody suite into perspective.

However, what was most surprising when viewing the BWV, was very little either sustained de-escalation techniques or disengagement used by most of the officers. The use of a Spit and Bite Guard requires the prior use of restraint, this appears often to involve leg restraints, preventing a suspect kicking or escaping, and handcuffing the suspect behind his or her back. Once restrained the suspect (or in a police station) is very often no longer a threat to officers or members of the public and, to avoid being spit at or bitten those officers need only to move a few away. This allows officers and the suspect to calm down and to use de-escalation techniques. It appears that pressure on officers to move the person to the police station is often the reason for the imposition of Spit and Bites Guards – this is obviously not a justification for a potential violation of the fundamental right not to be subject to ill-treatment (or the use of force). Of course, further action may be necessary but may not now be urgent.

WARNINGS

With regards to communication with the suspect, at 16.28 the Guidance states that:

'Prior to placing a Spit and Bite Guard on a subject, officers and staff should, where practicable, warn the subject. This warning should give clear instructions, for example, "stop spitting, to protect myself and others I am intending to place a Spit and Bite Guard over your head".'

In all cases of the BWV viewed no officer appeared to give that prior warning and instead gave the verbal warning whilst in the process of placing the Guard on the individual. In one example involving a child, who had begun spitting before the Guard was eventually applied, there appears to have been no warning given. In fact, the child appeared only to start to show violence when the officers were using force to arrest him. From the footage viewed there appeared to be an opportunity for an officer to use de-escalation techniques and communicate with the child, who was clearly a vulnerable individual and already resident in a children's home. As has been set out previously in this report, the traumatic effect that a Spit and Bite Guard can have, particularly on children, the importance of officers using de-escalation to reduce the amount of force required remains crucial.

It is appreciated that not in every circumstance will a prior warning have any effect on the individual continuing to spit and bite, particularly instances of mental health or when someone is intoxicated. However, it is a simple instruction to ensure a verbal warning is given in the context of de-escalation which gives the opportunity for the individual to reevaluate their actions and shows that person that the officer is trying to de-escalate the situation, *before* applying additional force.

EQUIPMENT, VEHICLES AND CUSTODY

A key threat to officers occurs when suspects are being moved to the police station. Cell vans allow a person to be transported without officers sitting with them. Some suspects but not all, will be at risk of self-harm but de-escalation and time during disengagement could further reduce this risk. More cell vans should be available and other vehicles should have perspex screens protecting officers.

Officers are all too often called to incidents when the real need is a medical or psychiatric intervention and officers are confronted with very difficult circumstances with little or no assistance from medical experts. In one of the BWV samples viewed officers were having to deal with a violent person who needed treatment in a psychiatric unit but because the health services were having difficulties the officers had to manage the person for over six hours, eventually using a Spit and Bite Guard.

Once a person is restrained and officers and the public are safe, officers then have to grapple with the problem of transporting the person arrested to police station custody. The need to do this quickly and to be able to deploy those officers to other tasks appears often as an unnecessary driver for the more urgent use of a Spit and Bite Guard.

The Guidance at 16.62 instructs officers to

‘ensure that, if it is proposed to transport the subject in a cell van wearing the Spit and Bite Guard, the subject is kept under level 4 observation (close proximity). Further information regarding custody supervision levels are available on the Operational Custody Governance and Policy page which is available on POINT. Officers should also be mindful of the duration a Spit and Bite Guard is worn by the subject whilst travelling to and waiting at a Custody Suite. As with any use of force, it should only be used while it remains necessary and a continual risk assessment should be carried out and the Spit and Bite Guard removed if appropriate.’

However, if the suspect is in a cell van where they cannot bite or spit officers then the Guard should no longer be in place – at least during that journey (and subject to any realistic threats of self-harm).

'16.63 A supervisor must be informed if the subject is not taken into custody but conveyed elsewhere. The custody officer must be informed of its use when the subject is booked in. Its continued use will be for the custody officer to authorise. Where a Spit and Bite Guard has been placed on a subject within the custody suite for a period of 30 minutes, an officer of at least the rank of Inspector must be informed as soon as practicable. This officer will review the circumstances regarding the continued necessity for the Spit and Bite Guard.'

In the custody suite or where the subject has been restrained or where they are in a cell or other safe area and there is room for officers to remain at a distance, the threat from spitting and biting will have disappeared and the justification for the use of a Guard may have disappeared with it.

RECOMMENDATION 12

Neither the Human Rights Advisor nor the Policing Board have the expertise to develop detailed proposals for the vehicles or alternative equipment that might be needed to keep both officers safe without the use of Spit and Bite Guards. The PSNI should therefore report on the options for safe travel for the some 0.6% of suspects that have currently to be transported wearing a Spit and Bite Guard.

RECOMMENDATION 13

The Guidance should be reworded to reflect the fact that officers must give a prior warning stating that if the individual does not stop spitting, then they will apply the Guard.

RECOMMENDATION 14

The training and Guidance should give better Guidance to officers on how to effectively communicate to de-escalate the situation and to disengage safely. This training on de-escalation and disengagement should reflect the examples from the other forces set out above, showing officers how to actively respond to a situation without using force. It is imperative that this training is detailed, in person and parts are delivered by those who are independent from PSNI, are professionally trained in social work or related fields and play a vital role in de-escalating situations involving complex mental health crises. If de-escalation or disengagement is effectively used, this is the best way to protect the individuals from unnecessary uses of force and also protecting the officers.

CHILDREN AND YOUNG PEOPLE

In her review, the Police Ombudsman noted that she remains concerned about the use of Spit and Bite Guards on children and young persons. Her report did, however identify that there are challenges for police officers in assessing whether a young person is under 18 and is, regardless of their age, still a real threat to the officers. Nevertheless, the Police Ombudsman is of the view that the use of Spit and Bite Guards on children and young persons should be prohibited.

The NIHRC have recommended that the PSNI develop and put in place robust safeguards to limit the possibility that a child under the age of 18 is mistaken for someone who has reached adulthood, this recommendation is also repeated here.

At 16.12 the PSNI Guidance currently states;

‘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. This means that officers should, where possible, avoid using a Spit and Bite Guard on a person under the age of 18.’

The Police Ombudsman acknowledges the addition of this presumption. However, she is concerned by the deployments that she has reviewed, where she does not believe that this presumption against deployment has been properly considered by officers. This concern is reflected in the Guidance recommendation issued by the Police Ombudsman outlining her view that police should develop clear Guidance on what is meant by this ‘presumption’ and that this Guidance should be communicated to all relevant officers.

This is an issue that was also identified by the Human Rights Advisor in his review of the BWV. In particular, there was an example where a Spit and Bite Guard was used on a child in a children’s home. This example reflects the concern of the Ombudsman with word ‘presumption’ used by PSNI as the officers in question were responding to a call at a children’s home and, it is assumed, already aware before arriving that this individual was under 18 years of age. The Guidance does not elaborate on what makes these situations ‘rare’ enough for it to be necessary to use a Guard.

PSNI should provide advice in the Guidance on what is ‘rare’ and, perhaps, with some examples of a child spitting or biting and when the use is justified and when is it not. At 16.15, the Guidance states that the:

‘vulnerability of the subject must be taken into consideration in the context of the threat to officers and other members of the public.’

The Human Rights Advisor identified opportunities in the footage where the officers might have been able to communicate with the child and de-escalate the situation.

The Police Ombudsman has also identified behaviours of concern exhibited by police officers when deploying Spit and Bite Guards on children and young people. In particular there is evidence of aggressive and overbearing officer conduct in some instances. Although the vulnerability of children is recognised within PSNI Guidance on Spit and Bite Guards, there have been occasions when police officers have given insufficient regard to the fact that children should not be treated in the same manner as adults. The Police Ombudsman is concerned that their intrinsic vulnerability requires serious consideration of the best interests of the child or young person by police officers. This is particularly important in the context of decisions regarding the use of force.

The Police Ombudsman believes that there remains a significant amount of work required to embed the 'Best Interests of the Child' in policing and that this approach is necessary to ensure that all children and young people, are protected in their interactions with police. In General Comment No 8, the UNCRC note that, where children are in conflict with the law, a use of force or restraint may be appropriate. The UNCRC note that a "clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply".¹⁰⁸

At 16.18 the Guidance states that where a Spit and Bite Guard is deployed on a person under 18, a local senior officer (at least Chief Inspector) will inform Social Services of the circumstances given that the incident has the potential to become an Adverse Childhood Experience (ACE). The PSNI EQIA states that:

"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 Start360 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 recently placing the Spit and Bite Guard over his or her head. The CAJ have noted that whilst there is no doubt merit in the delivery of 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 Spit and Bite Guard to Start360 will reduce any traumatic impact as a result of the use of the Guard.¹⁰⁹

108 General Comment No. 8 (2006) The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia) – Para 15 CRC-general-comment-8.pdf (endcorporalpunishment.org)

109 <https://caj.org.uk/wp-content/uploads/2021/05/Response-to-the-PSNI-consultation-and-EQIA-on-the-temporary-use-of-spit-and-bite-Guards.pdf>

The CLC have requested details of engagement between the PSNI and Start360 in relation to referrals being made for trauma counselling. CLC stated that Start360 run a number of programmes relating to employability and drug and alcohol misuse rather than trauma counselling for issues such as child abuse.¹¹⁰ It is suggested by CLC that the use of Spit and Bite Guards on children may not only cause a flashback to a traumatic event, it is likely to be a traumatic event in itself. It is clear that Article 3 of the UNCRC, the best interests' principle, requires a much stricter prohibition on the use of Spit and Bite Guards on children. Referring a traumatised child on to services to deal with their trauma is not satisfactory response, if the trauma can be avoided in the first place.

RECOMMENDATION 15

If an officer is aware the child is under 18 then the Guard should not be used under any circumstances. [Alternatively, where it is possible, only following authorisation from a Superintendent.] If the Guard is used on a child, then the incident of this should be notified to the Police Ombudsman who should review the Body Worn Video.

At 16.11 the Guidance states that:

'Officers should be aware that the application of a Spit and Bite Guard to a person under 18 years of age is highly controversial and is likely to result in criticism, therefore it is important that officers fully appreciate and understand why this is controversial.'

Whilst it is important to encourage officers to understand the different needs and vulnerabilities of those under 18, the fact it is 'controversial', perhaps, is not the most important factor.

RECOMMENDATION 16

The PSNI should amend their use of force training package and general training on the use of force on children, with specific reference to the use of Spit and Bite Guards, which should include:

- An explanation of children's rights;
- A simple explanation of the issues of the development of the child and adolescent brain;
- How children are likely to react differently to situations than an adult; and
- A detailed focus on the heightened risks of Spit and Bite Guard use on children and young people.¹¹¹

110 <https://childrenslawcentre.org.uk/tag/spit-and-bit-Guards/>

111 http://www.crae.org.uk/media/128551/CRAE_POLICING-SPITHOODS_PRINT.pdf

The CLC have noted that introducing Spit and Bite Guards without carrying out an EQIA properly, including by properly considering and putting forward mitigations to address the clear adverse impact and consideration of alternative policies to better promote equality of opportunity – constitutes a very significant threat to the lives of the most vulnerable children and young people in Northern Ireland and is in breach of the PSNI's section 75 obligations, the ECHR Article 2 Right to Life, ECHR Art 3 Torture Inhuman and Degrading Treatment and the UNCRC and the UNCRPD.¹¹²

RECOMMENDATION 17

Any new Guidance should be subject to consultation with children themselves in addition to those organisations that act as advocates for them.

Such a consultation is important not only in ensuring compliance with section 75, but also in ensuring the PSNI's compliance with Article 12 of the UNCRC, one of the principles of the UNCRC – respect for the views of the child. In examining the government's compliance with Article 12, the UNCRC recommends that the government:

“Establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services at the local and national levels, including in relation to discrimination, violence, sexual exploitation and abuse, harmful practices, alternative care, sexual and reproductive education, leisure and play. Particular attention should be paid to involving younger children and children in vulnerable situations, such as children with disabilities.”

The UNCRC is clear that children and young people as rights holders, with their own views and concerns, should be actively engaged and involved in the Guidance development process.

MENTAL HEALTH, DISABILITY, DRUG AND ALCOHOL INTOXICATION

What appears to be clear from talking to officers and viewing BWV samples is that a very significant number of those individuals spitting and biting, perhaps a majority, are, at the time, having difficulties in understanding what is happening to them or being able to act rationally and/or in their own best interests. Unfortunately, this is true of the many of those in the population of people that officers have to deal with every day. However, if this is correct, these people need expert help and, the use of force, whilst perhaps all too often necessary, is neither going to move them to a more rational place nor ensure that they are compliant. Both the Guidance and the training need to be reviewed to assist officers to deal with people in these 'out of control' states. It is understandable that officers want to have access to kit that helps them to exercise control and containment and can be used to protect them.

112 <https://childrenslawcentre.org.uk/tag/spit-and-bit-Guards/>

At 16.6 the Guidance notes that it essential for the officers to consider the vulnerability of a subject, this includes taking into account a subject's age or mental health, however omits to reference any physical or neurological disabilities. Due to the concerns outlined in the previous evidence section of this report regarding disability, it is recommended that the Guidance and training recognises both mental and physical health as a vulnerability. At 16.8 the Guidance states:

'Officers should be mindful of other vulnerabilities or medical factors that may exist. These may include visual impairment, epilepsy, respiratory illness or symptoms related to Covid-19. This list is not exhaustive. Good communication with the subject and other relevant parties can help to identify any vulnerabilities or relevant medical factors.'

RECOMMENDATION 18

The Guidance needs to be strengthened to include other medical factors, including autism and sensory issues. It also needs to help officers to deal with people who not only have such disabilities, but also those who have taken drugs or alcohol and are unable to act rationally.

The training should also cover these issues and provide officers with detailed Guidance on how to recognise such issues and problems that are not always obvious.

PSNI have stated that police officers and staff with an interest in neurodiversity have undertaken other initiatives recently. These include examining best practice in custody suites nationally and globally and devising a custody and autism toolkit, which forms part of mandatory custody training for all custody staff. PSNI has stated that it is hoped that this toolkit will become mandatory for all officers. As set out in the previous chapters of this report, individuals with sensory and mental health issues can spit out of frustration and the act of placing a Guard over their head may exacerbate their condition. Therefore, there are difficulties in deploying all officers with a Guard that could have a detrimental impact on persons with sensory issues, a 'hope' that this training will eventually become mandatory may need to be reconsidered.

The NIHRC recommends that data on the use of Spit and Bite Guards in relation to disability is disaggregated into different types of disability and types of intoxication and also recommends that disability rights and drug and alcohol groups are engaged in the formation of new Guidance in relation to the application of Spit and Bite Guards.¹¹³

113 <https://nihrc.org/uploads/publications/NIHRC-Spit-and-Bite-Guards-Submission.pdf>

At 16.9 the Guidance does, however, helpfully state that:

'Officers should be aware that there may be situations where communication barriers exist between the officer and the subject. You may be dealing with people who are deaf or hard of hearing, people who have autism or those individuals for whom English is not their first language.'

The NIHRC has previously raised concerns with the PSNI about the use of Spit and Bite Guards on persons with communication difficulties. For example, if a person is deaf and relies upon lip reading, placing a Spit and Bite Guard over their head will obstruct their ability to understand a situation or to hear and follow instructions. The EQIA notes that training has been amended to include reference to subjects with hearing difficulties. However, the Guidance on the use of Spit Guards only requires officers to "be aware that there may be situations where communication barriers exist between the officer and the subject" in relation to persons with hearing difficulties, it does not effectively address how an officer is to deal with communication barriers.¹¹⁴

The Guidance states that medical or mental health will not be an automatic barrier to use, but careful consideration should be given to vulnerabilities. However, the wording used here is confusing and does not give officers clear Guidance about when and how to take medical and mental health into consideration.

At 16.7 the Guidance states that if an officer is:

'aware or believes 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.'

However, PSNI statistics show that 75% of Spit and Bite Guards refer to individuals who were recorded on the PSNI system as having a self-harm flag or suicidal flag prior to the application of the Spit and Bite Guard. Therefore, given these statistics, it is difficult to ascertain how this Guidance is being applied.

RECOMMENDATION 19

Where an officer knows that someone has a mental health condition that could be exacerbated by the use of Spit and Bite Guards, particularly self-harm or suicide, then the Guard should not be used.

114 <https://nihrc.org/uploads/publications/NIHRC-Spit-and-Bite-Guards-Submission.pdf>

CONTINUED MONITORING AND OVERSIGHT

Body Worn Video

At 16.26, the Guidance states:

'BWV must be used when applying Spit and Bite Guards outside the custody suite... BWV must be activated by the officer/staff deploying the Spit and Bite Guard. BWV must remain activated for the duration of the deployment. Any encounters without a recording will require a reasoned explanation which will need to be agreed by a supervisor.'

The Police Ombudsman recommended that following deployment of a Spit and Bite Guard, BWV should remain activated until either the Spit and Bite Guard is removed, or the person arrives in a Custody Suite. This will allow continuing transparency and accountability as well as enhancing the monitoring of the person when the Spit and Bite Guard is in place.

Police have accepted this recommendation and officers and staff have been further informed that BWV must also be activated when applying a Spit and Bite Guard in the waiting bay of a Custody Suite. This wording should be reflected in the next version of the Guidance.

RECOMMENDATION 20

As the PSNI's Equality Impact Assessment states that all statistics on all uses of force are shared with the Policing Board bi-annually and statistics on the use of Spit and Bite Guards weekly, this should continue.

RECOMMENDATION 21

The Policing Board should consult with the Police Ombudsman, HMICFRS, CJINI and other inspection bodies on how best to implement this recommendation:

- Every use of a Spit and Bite Guard on a child should be reviewed;
- Every use of a Spit and Bite Guard on a person already in a police vehicle or police custody should be reviewed;
- Any use of a Spit and Bite Guard that occurs after a person is restrained and where officers can temporarily remove themselves to a safe distance should be reviewed;
- The Human Rights Advisor should dip sample the Body Worn Video of the use of Spit and Bite Guards over the second quarter of 2022 and report on his findings in October 2022;
- An independent investigation and report on the reasons why members of one religious group are more likely to be subject to a Spit and Bite Guard than another; and
- A complete review of the use of Spit and Bite Guards by PSNI should be conducted by the end of 2022.

ANNEX A

The Board's Independent Human Rights Advisor viewed extracts of body worn video where Spit and Bite guards were used by officers.

BWV FOOTAGE 1 – CHILD

This video depicted Officers arriving at a children's home in response to a call regarding a 14/15-year-old boy who was refusing to comply with the home in some regard. The circumstances of why he was being arrested or police had been called to the home was unclear. The footage showed multiple officers at the scene, waiting outside the bedroom of the child with care home staff. One female officer stood at the doorway of the bedroom and began to communicate with child. The child is lying on his bed, playing a game.

The female officer explained that due to the child's refusal to comply this was enough grounds to arrest him. In the background you could hear a lot of chat from the other officers and care home staff. The child was communicating with the officer and whilst he seemed to be upset about the situation, he was calm. At this point he was not showing any aggression towards officers, care home staff or himself. He was not showing any signs of volatile behaviour and there was sufficient distance between him and the officers/staff, as he continued to communicate from his bed.

The female officer's conversation with the child was very short, from watching the footage, it could potentially be said that the child was known to the officers, however this is unsubstantiated. The officer explained that due to his refusal to comply, this was sufficient grounds to arrest him and at that time, four other officers came into the room and began to arrest the child, lifting him from his bed. There was no signs of de-escalation from the officers (the Guidance cites that the officers should use good communication or apply additional PPE). As previously stated, the child was not acting violently and the officers and staff present were in the hallway outside of the room – there was no present threat to the officers, the staff or himself – yet these are the reasons cited for using force. There appeared to be opportunity for the officer speaking to the child to use good communication, address the child's concerns and see if the child would be willing to comply. As the other officers were outside of the room, they could have put on PPE if they expected a forceful situation. There were no methods of de-escalation from the officers that we viewed.

The child did not appear to be volatile or openly aggressive towards the officers but was resisting arrest by remaining static and not complying. During the arrest the child became extremely upset. Multiple officers were shouting at the child to 'stop resisting'. The child was shouting back, calling the officers derogatory names. The child was forced to a prone position on the ground with his head pushed to the floor, with an officers hands on the child's head with remaining three officers restraining the rest of his body.

When his head was forced to the ground, it was turned sideways, and the footage showed the child spitting onto the floor. This did not seem to be addressed by the officers at this point. The child was placed into restraints (hand cuffs and leg restraints) and was taken down the stairs to the cell van.

The footage showed the child forced into the back of the cell van, at this point he appeared to be extremely distressed, screaming and smashing his head off the side of the van. The child was completely restrained, lying in the van with his trousers down as they were caught on the leg restraints. At this point two officers remained in the van with the child with the other officers standing outside of the van. The child started to spit and at this point the Spit and Bite Guard was applied. The Officer applying it did not give any warning, only explaining that the Guard was going on because he was spitting. He was not pre-warned that if he continued to spit that a Guard would be applied, despite the spitting starting in the bedroom. The officers then closed the cell van door and stepped out of the van.

BWV FOOTAGE 2 – INTOXICATED MAN IN FIELD

This footage showed officers responding to a call from other officer colleagues requesting a Spit and Bite Guard for a man resisting arrest. The footage showed the man already restrained (handcuffs) in a field. There was multiple officers standing around the man and a female officer was communicating with him.

The man was intoxicated in some regard, however it is unclear if he is under the influence of alcohol or drugs. He appears very distressed and volatile. The arrival of the new officers with the Spit and Bite Guard means that there are at least four officers present. The man is on his knees, trying to move, but keeps falling over. It is unclear how he could be a physical threat to the officers as he was restrained or to the public, as this incident is taking place in a field with no one else present.

The female officer is communicating with the detainee, who is shouting using very graphic comments. At this time the other officers present restrain him and force him into the prone position, applying pressure to his head and forcing it sideways. One officer can be heard saying “he is spitting” and another officer present applied the Spit and Bite Guard. There is no-escalation methods used and limited use of communication. No officers applied additional PPE despite there being enough space and time to do so.

BWV FOOTAGE 3 – MENTAL HEALTH

This footage shows an officer at a private dwelling, responding to a 999 call to a mental health emergency. The individual is suffering from schizophrenia and is having a schizophrenic episode. The individual is in the care of her elderly parents who call the emergency services as they are concerned for her welfare.

It is clear that the individual needs to be sectioned under the Mental Health Act, but as this is taking place in a private residence, the police are unable to do this and are required to call for a medical professional. Ambulances arrive on multiple occasions, but without the assessment of a doctor the paramedics are unable to process this and leave. Due to delays, it takes a very long time before a doctor could arrive to assess the individual and the officers are at the residence for a total of nine hours.

The individual believes she is at risk of violence, not believing her parents or the officers are who they say they are. Due to her being fearful, the individual has a broken hanger in one hand and a piece of porcelain in the other. Due to her mental state, the officer present decides that it was best not to handcuff her. However, she is in leg restraints.

The footage shows that during the doctor's assessment of the individual, she starts to act violently, with the officers trying to restrain her. At this point the restraining of the individual causes her more distress. It isn't clear if the individual is spitting or if it is fluid leaving her mouth in her panic, as it does not seem to be intentional. The officer asks the doctor if there was medical reason why a Spit and Bite Guard should not be applied, to which the doctor says no. The officer does not give the individual any warning or explain why the Guard was being applied. When the Guard is applied this exacerbates the situation and distresses the individual even more.

BWV FOOTAGE 4 – UNCONSCIOUS MALE IN CUSTODY

This footage shows a male in a custody suite who has a Spit and Bite Guard already applied. At this point in the video the officers arrive in custody with the individual, the footage does not show how/why the guard was applied but we are told that the male was under the influence of drugs or alcohol.

The footage starts with the individual restrained on the floor, and one officer holding him up. The officer tells the man that he is going to remove the Spit and Bite Guard, but there is no response from the man. The officer removes the Guard. The detainee remains unconscious. The officers continue to speak to him to try to rouse him, but there is still no response. The officer determines that he needs to go to hospital. The officer proceeds to reapply the used Spit and Bite Guard while he remains unconscious.

BWV FOOTAGE 5

This footage is very short. It shows a young male who appears to be intoxicated in some regard and very distressed, in the street, resisting arrest. The officers force the individual into the prone position with one officer was forcing his head sideways. Whilst it is not visible on the BWV, an officer says that the individual is spitting and a Spit and Bite Guard is applied. The video ends very shortly after the Guard is applied. Throughout the footage there is no evidence of good communication or de-escalation from the officers.



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A Review of PSNI's Use of Spit and Bite Guards
by the NI Policing Board's Human Rights Advisor

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