

Statutory Report

Public Statement by the Police Ombudsman pursuant to Section 62 of the Police (Northern Ireland) Act 1998.

AN INVESTIGATION INTO POLICE POLICY AND PRACTICE OF PROTESTS IN NORTHERN IRELAND.

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This Report does not examine the facts or circumstances of individual cases where allegations of non-compliance with the Regulations have been made or alleged breaches of public and human rights law by those who claim to have been adversely affected by the implementation of the policies examined as part of the Report.

Police Ombudsman's Foreword

The challenges arising from the Coronavirus pandemic have been experienced by humanity on a global scale. These are unprecedented times and the response from governments and locally the Northern Ireland Assembly (the Assembly) correctly had focused on the public health measures needed to ensure we are all safe. The Northern Ireland Executive's response has been to bring forward the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (the Regulations). These new regulations were enacted as emergency legislation made by the Assembly without consultation or legislative debate, such was the nature of the global crisis and the need for urgency.

The impact of the virus across society has been well documented. The tragic loss of life and illness suffered by individuals and the impact on families, colleagues and ultimately businesses and longer term effects on the economy cannot be ignored. The pandemic has placed pressure on a number of public services including health and other emergency services such as police and ambulance. The task of enforcing the Regulations has fallen largely to PSNI, unfairly in my view, as Regulations make reference to the role of other 'designated' officials such as public health and local authority officials. With these new powers come new responsibilities for police officers. I recognise that like other essential services police officers continued to keep us all safe and could not themselves work or stay at home to keep themselves and their families safe. I acknowledge that this was an entirely novel situation not just for policing, but for society as a whole.

Complaints about the police enforcement of the Regulations has been carefully monitored by my Office throughout the pandemic. Complaints were wide ranging and many were less serious in nature. For instance complaints about police not socially distancing when travelling together in a car or when handcuffing suspects. A number of complaints relate to the attitude of police officers when warning specific members of the public about the public health emergency and advising them to return home.

A significant proportion (22%) of the 136 complaints received about the police during the period from 28th March to 31st October 2020 related to enforcement by police of the Regulations in respect of gatherings of people such as at funerals and when queueing outside shops.

My Office received twenty four concerns in total about differential treatment by police of organisers and protesters at 'Black Lives Matter' events which were held in Belfast and Derry/Londonderry on 6th June. The detail of these concerns is outlined at section three of this report. However, a common theme is that the policing of those events was inconsistent. Also, that when compared to the policing of the 'Protect Our Monuments' protest on 13th June, the differential treatment was unfair and the Regulations were interpreted in a discriminatory 'fashion'.

In light of these concerns, I decided to commence an investigation under Section 60A of the Police (Northern Ireland) Act 1998 (the 1998 Act).

This is my first public report on an investigation made pursuant to Section 60A of the 1998 Act and differs from an investigation into alleged criminality or misconduct by an individual police officer. A Section 60A investigation examines current policing policy and practice. In light of the public concerns, I have decided that this investigation was necessary and in the public interest in order to ensure the public's trust and confidence in PSNI. In accordance with Section 60A(2) of the 1998 Act, I am today presenting this report to the Chief Constable, the Department of Justice (the Department) and the Northern Ireland Policing Board (the Board) for consideration.

On 12th November 2020, the Board published its thematic report into the human rights issues arising from the PSNI's application of the Regulations. That report commented on the 'Black Lives Matter' protests, and the human rights considerations in relation to the PSNI's approach on 6th and 13th June. I am grateful to the author of that report, Mr John Wadham and also the Board for the explanation of the human rights principles and case law that applied to these circumstances.

I am aware of litigation in the courts by way of Judicial Review proceedings and a potential challenge in the Magistrate's court to a Fixed Penalty Notice (FPN). Both sets of proceedings relate to the 'Black Lives Matter' protests of 6th June 2020. In the context of a S 60A investigation, my role as Police Ombudsman is not to adjudicate on individual cases or make findings on the lawfulness and/or rationality of a police officer's decision in a particular case; that is a matter for the courts. I have been mindful in preparing this report to seek to avoid any prejudice to the court's consideration of the legality of the actions of PSNI in relation to individuals.

It has always been my intention in investigating this issue to seek to identify the opportunity to provide lessons learned, if any, to the PSNI while making practical and proportionate recommendations for the Chief Constable to consider.

This report sets out my terms of reference and investigation conclusions. I am grateful for the assistance and co-operation of the Chief Constable, his senior team, the Gold Commanders of 6th and 13th June and that of officers involved in the protest events which gave rise to this investigation. Both my staff and I have met with representatives of the Black, Asian and Minority Ethnic communities and considered their concerns in arriving at my conclusions. I have also had discussions with the Chief Human Rights Commissioner and Chair and Chief Executive of the Equality Commission for Northern Ireland on the relevant equality and human rights issues that apply to the policies and practices of the PSNI at the relevant time. I am grateful for their time and expertise in these areas.

Marie Anderson
Police Ombudsman for Northern Ireland

Executive Summary

The Police Ombudsman's Office was established in November 2000, its statutory function is to independently investigate all complaints about the conduct of officers of the Police Service of Northern Ireland (PSNI). The Police Ombudsman may also investigate matters indicating criminality or misconduct on the part of any police officer which are referred to her by the Chief Constable, the Northern Ireland Policing Board, the Department of Justice, Director of Public Prosecutions and the Secretary of State.

The Ombudsman may also investigate of her own motion where no complaint has been received and she considers it is in the public interest to do so. The legislation providing for these investigations is Part VII of the Police (Northern Ireland) Act 1998 (the 1998 Act) and this legislation has been amended to extend the powers and remit of the Ombudsman by way of primary legislation and regulations.

In particular, the powers of the Police Ombudsman were extended from 8th April 2003 by the insertion of Section 60A¹ to the 1998 Act. This amendment provides for investigation by the Ombudsman in relation to current policing practice or policy.

Section 60A provides as follows:

- (1) 'The Ombudsman may investigate a current practice or policy of the police if –*
- a) The practice or policy comes to his attention under this Part, and*
 - b) He has reason to believe that it would be in the public interest to investigate the practice or policy....., '*
- (3) If the Ombudsman decides to conduct an investigation under this section he shall immediately inform the Chief Constable, the Board and the Department of Justice of –*
- a) his decision to conduct the investigation,*
 - b) his reasons for making that decision, and*
 - c) the practice or policy into which the investigation is to be conducted.'*

¹ Section 13 Police (Northern Ireland) Act 2003

Following protests in support of 'Black Lives Matter' at Custom House Square, Belfast and the Guildhall, Derry/Londonderry on 6th June 2020, the Police Ombudsman received a number of concerns from members of the public about policing and enforcement at the events. These concerns related to matters of 'direction and control' rather than the conduct of individual members of the police service. Therefore the Police Ombudsman would not have had a lawful basis upon which to conduct investigations of those matters.²

Nevertheless, recognising the important issues highlighted by the public concerns, the Police Ombudsman decided to commence an investigation under Section 60A of the 1998 Act with a view to examining relevant PSNI policy and practice matters.

On 12th June 2020, the Police Ombudsman notified the Chief Constable, Policing Board and Department of Justice of her decision to commence a Section 60A investigation.

Concerns were heightened following a public gathering at Belfast City Hall on 13th June 2020. Among the persons attending this event, which the media linked to a group calling themselves the 'Northern Ireland Cenotaph Protection Group', were individuals identified by police to be members of the Loyalist community. Others in attendance wore military insignia. The gathering was a reaction to a suggestion that a further 'Black Lives Matter' protest would take place at the City Hall on the same day and alleged links to incidents of damage and defacing of historical statues and monuments elsewhere by such protests. The gathering on 13th June 2020 at Belfast City Hall will be collectively referred to in this report as 'Protect Our Monuments'.

The Police Ombudsman subsequently received further concerns and representations from members of the public who commented that a different approach had been adopted by police at the 'Protect Our Monuments' demonstration when compared to the earlier 'Black Lives Matter' protests.

² S.52(5) Police (Northern Ireland) Act 1998

The various public allegations included claims of inconsistent enforcement of the Regulations in a 'discriminatory fashion', unfair treatment and criminalisation. One complainant alleged that she had been subjected to pressure by police to cancel the Custom House Square protest planned for 6th June 2020. As a result of enforcement action taken by police at the 'Black Lives Matter' protests, a number of individuals have been reported to the Public Prosecution Service (PPS) for the offence of assisting or encouraging the commission of an offence under Section 44 of the Serious Crime Act 2007. At the time of writing the PPS have not yet issued directions in relation to the persons reported to them.

In light of the totality of the issues identified, the Police Ombudsman expanded upon her terms of reference for the investigation under Section 60A of the 1998 Act.

There is a requirement when conducting a Section 60A investigation for the Police Ombudsman to consider whether it is in the public interest to commence an investigation into current policing policy and practice. The following Public Interest Factors were identified:

- (i) The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 were introduced as emergency legislation against a grave global pandemic. There was therefore limited scope for Assembly consultation and legislative scrutiny.
- (ii) The legislation impacted significantly on civil liberties (including the right to freedom of expression and peaceful assembly). There has been widespread expression of public concern regarding the nature of PSNI policy and the consistency of its implementation in relation to enforcement of the legislation by way of FPNs, including suggestions of discriminatory practice.
- (i) These factors engage issues of public confidence in policing policy which the Police Ombudsman has reason to believe are of sufficient public interest to merit an investigation in the public interest.

A Section 60A investigation is an investigation into a police policy or practice. These terms are not defined in the 1998 Act. Black's Law dictionary defines a policy as '*A standard course of action that has been officially established by an organisation, business or political party*'. The Concise Oxford English Dictionary defines policy as '*a course or principle of action adopted or proposed by an organisation or individual*'. Practice is also defined in Black's Law Dictionary as '*the actual application or use of belief or method*'. In the Concise Oxford English Dictionary the word practice is defined in similar terms as '*the actual application of or use of a plan or method as opposed to the theories relating to it*'.

The investigation focused on assessing PSNI policies and their implementation for the events in question. This also comprised an examination and analysis of how the PSNI enforced the Regulations at both events and any follow up actions.

The Police Ombudsman is mindful that the Regulations first came into force in Northern Ireland on 28th March 2020 and over the following months were subject to a number of changes. The amendments were introduced under emergency procedures, in consequence there was limited consultation or debate before the Northern Ireland Assembly.

The investigation sought to establish the following:

- (i) The differences (if any) in PSNI policies and their implementation at the 'Black Lives Matter' protests in Belfast and Derry/Londonderry on 6th June and the reasons for those differences;
- (ii) The differences (if any) in PSNI policies and their implementation between the events of 6th June and 13th June and the reasons for those differences;
- (iii) Whether the actions of police at Belfast and Derry/Londonderry on 6th and 13th June were consistent with those policies and if not the reasons for this difference;
- (iv) Whether the bespoke strategic, tactical and operational plans and orders for the three protests were implemented appropriately and proportionately, having regard to the circumstances of each event.

The investigation also sought to examine a number of additional matters raised by members of the public:

- (v) The time of the change to the Regulations on 5th June 2020, extending enforcement powers in respect of 'gatherings', was viewed as a deliberate attempt by the PSNI to ensure it had more powers to police the events of 6th June;
- (vi) PSNI policies and practices applied to 'Black Lives Matter' protesters and organisers were considered to have been inconsistent and discriminatory when compared with those applied by the PSNI on 13th June to the organisers and those attending the 'Protect Our Monuments' demonstration; and;
- (vii) The level of the police presence and nature of its enforcement of the Regulations at the 'Black Lives Matter' protests on 6th June 2020 created an atmosphere of 'intimidation and harassment'.

During the course of the investigation conducted under Section 60A, the Police Ombudsman identified a matter, not subject of a public complaint, which led to her commencing an own motion investigation under Section 55(6) of the 1998 Act into the conduct of a number of police officers.

Section 55(6) provides:

'The Ombudsman may of his own motion formally investigate in accordance with section 56 any matter which:

- a. appears to the Ombudsman to indicate that a member of the police may have
 - (i) Committed a criminal offence: or*
 - (ii) Behaved in a manner which would justify disciplinary proceedings; and**
- b. is not the subject of a complaint, if it appears to the Ombudsman that it is desirable in the public interest that he should do so.'*

The Ombudsman will report separately on this investigation at a later date.

The Police Ombudsman is cognisant of litigation in the courts by way of Judicial Review proceedings and a potential challenge in the Magistrate's Court to a FPN.

This Report does not examine the facts or circumstances of individual cases where allegations of non-compliance with the Regulations have been made or alleged breaches of public and human rights law by those who claim to have been adversely affected by the implementation of the policies examined as part of the Report.

The Police Ombudsman's role is not empowered to adjudicate on individual cases or make findings on the lawfulness and/or rationality of a police officer's decision in a particular case; that is a matter for the courts. In preparing this Report the Police Ombudsman will seek to avoid the risk of prejudice to proceedings (if any) in any court to determine the guilt or innocence of any individual accused of an offence or the legality of PSNI's actions in relation to individuals.

In May 2020, the Northern Ireland Policing Board (the Board) issued Terms of Reference for a Human Rights Review of the PSNI response to COVID-19. On 12th November 2020, the Board published its report on that review of human rights issues arising from the Regulations. The report commented on the 'Black Lives Matter' protests and the human rights considerations that were engaged in relation to the PSNI's approach and decisions relating to the protests on 6th and 13th June. In preparing this report the Police Ombudsman has sought to avoid any prejudice to the PSNI's considerations of the Board's recommendations in its November 2020 report.

Conclusions

Although the overarching PSNI approach to the policing of the events on 6th and 13th June were similar and based on the Four 'E's (engagement/explanation/encouragement/enforcement), the PSNI practices for the policing of 6th June were substantially different from 13th June.

The PSNI policy and operational orders for the 'Black Lives Matter' protests of 6th June in Belfast and Derry/Londonderry were similar. However, the implementation of those

orders (PSNI practices) were inconsistent and resulted in many more FPNs being issued at the Derry/Londonderry event to protesters and organisers than at the Belfast event.

The PSNI policy and operational orders for 6th June 2020 refer to rights under the European Convention on Human Rights (the Convention). However, PSNI failed to demonstrate regard to Article 10 (freedom of expression) and Article 11 (right to protest and right to peaceful assembly and association) as well as the PSNI's positive obligation under Article 11 to facilitate the right to peaceful assembly.

The policy and operational orders for 6th June were not justifiable at the time as they failed to have regard to the approach of other UK Police Forces (who were bound by the Four E's) and to the organisers' proposals for safe protests and social distancing.

In particular, the PSNI policy and operational orders of 6th June were not underpinned by a human rights assessment that demonstrated a consideration for the need to balance Article 2 rights (right to life) and the protester's rights under Articles 10 and 11 of the Convention.

The PSNI approach applied to 13th June event was inconsistent to the approach on 6th June in that it was aimed at encouraging the demonstrators to gather in a COVID-19 compliant manner. In preparation for 6th June events, the PSNI attempted to persuade the organisers to cancel the protests. The operational order relating to 6th June indicates that the PSNI's preferred outcome was to have organisers cancel the events. Police would disagree with my interpretation and have responded that they sought to facilitate a peaceful protest. However, this is contradicted by accounts provided by members of the public who have stated they were approached by police prior to the protests and attempts made to dissuade them from proceeding. Further, police intervention at transport hubs was with the intention of dissuading attendees. Furthermore, it is my view that the wording of the operational order provides evidence that there was a failure to demonstrate consideration of obligations imposed upon PSNI by Articles 10 and 11.

Those protesters who sought to exercise their rights in support of the 'Black Lives Matter' on 6th June were unfairly treated and this gave rise to a perception of discrimination in the public's mind. I believe this perception is justified given that the policing practices of 13th June were substantially different and did not reflect the need to treat protesters equally and in a manner which addressed human rights.

There was no underpinning formal engagement strategy with the Black, Asian and Minority Ethnic Communities for 6th June. Although I acknowledge that by 13th June PSNI had in place a bespoke engagement plan. The impact of PSNI actions on 6th June was significant and there is evidence that there has been a loss of confidence in PSNI from some within the Black, Asian and Minority Ethnic Communities. The PSNI have acknowledged that there has been damage to relationships with some members of these Communities. The Chief Constable further acknowledges that this warrants critical reflection and learning.

A significant number of FPNs issued to 'Black Lives Matter' protesters were not comprehensively completed and this practice is potentially unfair as it could in my view, impede any ability to challenge by the recipient of the notices.

By contrast with 6th June, there is evidence that the operational policy on 13th June sought to balance the rights of demonstrators. PSNI policy documents for 13th June record consideration for the protester's human rights. It is the PSNI's position that there is evidence that they engaged in a balancing exercise throughout all of the events which intended to give regard to interference with qualified rights in the context of the health emergency. However, it is my view that a more structured and considered Human Rights Based Approach (HRBA) should be adopted when determining issues relating to protest events. The HRBA principles are as follows:

- Participation
- Empowerment
- Equality and non-discrimination
- Accountability

My investigation has established that FPNs were issued on 6th June 2020 at the 'Black Lives Matter' protests by PSNI officers and files forwarded to the PPS for potential prosecution of organisers in respect of offences pursuant to Section 44 of the Serious Crime Act 2007. However, no FPNs or follow up action was taken by PSNI in respect of 13th June 'Protect Our Monuments' demonstration.

My investigation has established that the PSNI did not make representations or have any other role in the circumstances leading to the legislative amendments that made breaches of Regulation 6A (of the Coronavirus Regulations) enforceable under Regulation 7 and made breaches of 6A a specific offence.

In conclusion:

I am not empowered to make a determination in respect of the conduct of any police officer when considering the application of a PSNI policy or practice under Section 60A of the 1998 Act. It will be a matter for the courts and/or appropriate tribunal if required to reach a conclusion as to whether the treatment of individuals at the 'Black Lives Matters' Protests on 6th June 2020 amounted to discrimination in fact.

The differential treatment by PSNI of protesters on 6th June when compared with those attending 'Protect Our Monuments' on 13th gave rise to claims of unfairness and discrimination against those persons who organised and attended the 'Black Lives Matters' protests. These concerns are in my view cogent, have substance and are justified in the circumstances. I believe that this unfairness was not intentional. Neither was it based on race or ethnicity of those who attended the event. Rather PSNI failed to balance Human Rights with the public health considerations and requirements of the Regulations.

Confidence in policing of some within the Black, Asian and Minority Ethnic Communities of Northern Ireland and has been severely damaged by the PSNI's policing of the 'Black Lives Matter' protests.

Section 1: Introduction

- 1.0 On 25th May 2020, Mr George Floyd, a 46 year old black man, died while being restrained on the ground by police officers at Minneapolis, Minnesota, USA. Footage of the incident showed one officer pressing his knee into Mr Floyd's neck for nine minutes. The four police officers involved have since been charged with offences relating to Mr Floyd's death.
- 1.1 Reporting on the circumstances of Mr Floyd's death and policing of Black Communities prompted protests, some leading to public disorder, across America, the United Kingdom and cities around the world under the banner of 'Black Lives Matter'.
- 1.2 In Northern Ireland protests were held on Friday 29th May 2020 at Free Derry Corner, Sunday 31st May 2020 at Writers' Square, Belfast and on Monday 1st and Wednesday 3rd June 2020 at Belfast City Hall, the latter of which attracted an estimated 2000 people.
- 1.3 The PSNI assessment of the event at Belfast City Hall on 3rd June 2020 was that it had resulted in a "significant breach of the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (as amended)"
- 1.4 The PSNI subsequently became aware of plans to hold further protests at Custom House Square, Belfast and the Guildhall Square, Derry/Londonderry on Saturday 6th June 2020. The latter was described as a "Socially Distanced Day of Solidarity – Justice for George Floyd". Protests planned for Newry, Portadown and Armagh scheduled for the same date were cancelled by the organisers.

- 1.5 In the context of the COVID-19 health emergency, policing of the protests attracted coverage by the media and public commentary. The PSNI has been criticised for both perceived failures in preventing the protests and for issuing FPNs to those who attended.
- 1.6 The common theme running through the majority of the twenty four public concerns received by the Police Ombudsman (from either the protesters/organisers or those supporting the 'Black Lives Matter' cause) is that the PSNI consciously criminalised attendance at the protests. However, those attending and/or organising a 'Protect Our Monuments' protest on 13th June 2020 were not subject to enforcement action. It was also claimed that this has adversely impacted public trust and confidence in policing within a number of minority communities in Northern Ireland.
- 1.7 Public emphasis had centred on social distancing whilst restrictions on gatherings were not so widely understood. The concept of social distancing is not in fact contained within the Regulations and as such police cannot enforce it. This misunderstanding, exacerbated by successive amendments to the Regulations was evident among some of the protesters who attended 'Black Lives Matter' protests on 6th June 2020.
- 1.8 Having received public concerns relating to police enforcement of the Regulations at the 'Black Lives Matter' protests at Custom House Square and the Guildhall Square on 6th June 2020, the Police Ombudsman decided to commence an investigation under Section 60A of the Police (Northern Ireland) Act 1998 (1998 Act). This provision requires submission of a report to the Chief Constable, the Department and the Board at the conclusion of the investigation.³ This decision was further consolidated following alleged

³ (1) The Ombudsman may investigate a current practice or policy of the police if-

(a) the practice or policy comes to his attention under this Part, and

(b) he has reason to believe that it would be in the public interest to investigate the practice or policy

(2) But subsection (1) does not authorise the Ombudsman to investigate a practice or policy to the extent that the practice or policy is concerned with conduct of a kind mentioned in section 65(5) of the Regulation of Investigatory Powers Act 2000 (conduct which may be within jurisdiction of tribunal established under section 65 of that Act).

(3) If the Ombudsman decides to conduct an investigation under this section he shall immediately inform the Chief Constable, the Board and the Department of Justice of-

(a) his decision to conduct the investigation,

differential treatment pertaining to the 'Protect our Monuments' demonstration on 13th June 2020.

1.9 The Ombudsman considered that a Section 60A investigation was the appropriate mechanism to assess how the PSNI implemented policies and operational planning at these events.

1.10 The PSNI's response to information that 'Black Lives Matter' protests were being planned for 6th June 2020, was primarily informed by the National Police Chief Council's Guidance (the Guidance) in relation to adherence to the Regulations:

- i. Engagement
- ii. Explanation
- iii. Encouragement
- iv. Enforcement

Commonly referred to as the Four 'E's.

1.11 As a first step, the PSNI's interpretation of the Guidance was to actively persuade organisers of the proposed events to cancel the events.

1.12 By the evening of Friday, 5th June 2020 the protests initially planned for Newry, Portadown and Armagh had been cancelled. It had also become clear, however, that protests planned for Custom House Square, Belfast and Guildhall Square, Derry/Londonderry would proceed.

1.13 Broadly the PSNI's planning for the 'Protect our Monuments' event on 13th June 2020 reflected the approach adopted in respect of the protests on 6th June 2020.

(b) his reasons for making that decision, and (c) the practice or policy into which the investigation is to be conducted
(4) When an investigation under this section has been completed the Ombudsman shall report on it to the Chief Constable and the Board.

- 1.14 The Police Ombudsman's investigation identified a key difference in approach in that enforcement of the Regulations on 13th June 2020 required authorisation by an Assistant Chief Constable (ACC). This was in contrast to the policy applied on 6th June 2020 when police Sergeants present at those protests were able to authorise enforcement action by way of FPNs.
- 1.15 Between 6th and 13th June a change to the Regulations was introduced by the Assembly whereby they were amended to increase the numbers of persons permitted to gather outdoors from six to ten.
- 1.16 The lawfulness of enforcement of the Regulations, where it may have adversely impacted on the human rights of individuals participating in the 'Black Lives Matter' protests of 6th June 2020, has been comprehensively reviewed by the Board⁴.
- 1.17 The Police Ombudsman is aware that a number of applications for Judicial Review have been brought by persons challenging the legality of the Regulations and claiming discrimination in its enforcement at the 'Black Lives Matter' protests. The applicants seek a declaration that their human rights have not been given just effect. She is also aware of a potential challenge in the Magistrate's court to a Fixed Penalty Notice (FPN). Consideration of the legality of the Regulations are ultimately a matter for the Court.

⁴ Report on Review of the Police Service of Northern Ireland (PSNI) response to COVID-19 (November 2020)

Section 2: The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020

2.0 The Regulations came into force in Northern Ireland on the 28th March 2020. Between commencement and 13th June 2020 the Regulations were amended six times by way of emergency procedure⁵.

2.1 Regulation 7 was amended on 5th June 2020 to provide for enforcement of Regulation 6A which permitted outdoor gatherings of up to six people. The circumstances of this amendment have been raised as a public concern. The concern is that the amendment was introduced the evening before the 6th June protests in order to 'facilitate' the PSNI at those events.

2.2 Regulation 6 provides for restrictions on gatherings. The Regulations dated 28th March 2020 state:

'no person [could] participate in a gathering in a public place of more than two people except:

(a) Where all members in the gathering are members of the same household.

(b) Where a gathering is essential for work purposes.

(c) To attend a funeral.

(d) Where reasonably necessary:

(i) To facilitate a house move

(ii) Provide care or assistance to a vulnerable person

(iii) To provide emergency assistance

(iv) To participate in legal proceedings or fulfil a legal obligation'.

⁵ Section 25Q Public Health Act (Northern Ireland) 1967

2.3 Regulation 7(1) states:

‘A relevant person may take such action as is necessary to enforce any requirement imposed by regulation 3, 4 or 6...’.

2.4 Regulation 7(9) enables a ‘relevant person’ to:

- Direct any gathering in contravention of Regulation 6 to disperse.
- Direct any person in the gathering to return to the place they are living.
- To remove any person in the gathering to the place where they are living.

2.5 Regulation 8 states:

‘A person who –

(a) Without reasonable excuse contravenes a requirement in regulation 3, 4, 6 or 7, or

(b) Contravenes a requirement in regulation 5, commits an offence.’

2.6 Regulation 6 was subsequently amended on 19th May 2020 by adding Regulation 6A. This amendment permitted outdoor gatherings of up to six people who are not in the same household. Breaches of Regulation 6 had previously been enforceable under Regulation 7. However, when Regulation 6A was first introduced, breaches of this Regulation were not enforceable under Regulation 7.

2.7 On 5th June 2020, the Regulations were amended to make breaches of Regulation 6A enforceable under Regulation 7, and Regulation 8 was amended to create a specific offence of breach of 6A. Other amendments to the Regulations were also made at this time. Although other amendments did not take effect until 11pm on 7th June 2020, the amendments relating to Regulation 6A took effect on Friday 5th June 2020 at 11pm. The following day (6th June), ‘Black Lives Matter’ protests were held in Northern Ireland.

- 2.8 Review of the Assembly Minutes in the days leading up to this amendment do not make reference to the need for amendment. This particular amendment was not discussed in the Assembly until 30th June 2020, at which time the amendments in relation to the enforcement of Regulation 6A were described as *'technical amendments'* by the Junior Minister, Mr Christopher Lyons MLA.
- 2.9 This investigation included a review of the Regulations and related amendments. There were no significant changes to the Regulations regarding enforcement of public gatherings between 6th and 13th June 2020, except for the extension of the limit of people from different households in an outdoor gathering from six to ten.
- 2.10 As part of this investigation, the Police Ombudsman's legal advisor wrote to the Chief Environmental Health Officer (CEHO) in July 2020 seeking information or documentation to clarify the rationale and timing of the amendment to Regulation 6A.
- 2.11 On 7th August, the CEHO responded advising that although the Health Protection (Coronavirus, Restrictions) (Amendment No. 3) Regulations (Northern Ireland) 2020 (Amendment No. 3) allowed for the insertion of Regulation 6A, outdoor gatherings of up to 6 people, there had been an error whilst drafting whereby in Amendment No.3, the enforcement provision had not been amended to take account of the new Regulation 6A.
- 2.12 The CEHO confirmed that this error had been spotted on the 5th June 2020, when staff at the Departmental Solicitor's Office were drafting Amendment No. 5 of the Regulations. The drafting error was rectified by way of a technical amendment which was included in Amendment No.5 of the Regulations and came into operation on 5th June 2020 at 11:00pm.
- 2.13 The drafting error in Amendment No. 3 meant that between its introduction on the 19th May 2020 at 11:00pm and introduction of Amendment No. 5 of the

Regulations on the 5th June 2020 at 11:00, a breach of Regulation 6A was not an offence.

- 2.14 The CEHO has advised that the PSNI and Department of Justice were made aware of this position on the 5th June, shortly after the drafting error was identified, and were advised that this was to be rectified by way of an urgent amendment which would come into operation at 11:00pm on 5th June 2020. The CEHO advised that he was not aware of any instance in which the PSNI had issued a fixed penalty notice for a breach of Regulation 6A between the 19th May and 5th June 2020.
- 2.15 The CEHO highlighted two key points in his response. Firstly, that Regulation 6, which related to a gathering in a public place of more than two people, remained in operation throughout the period from 19th May to 5th June. Regulation 7 (enforcement) and Regulation 8 (offences) were applicable to Regulation 6 from the outset and therefore, there was no interruption to the enforceability of the restrictions on public gatherings.
- 2.16 Secondly, the CEHO notes that Regulation 6A was intended to allow for families and friends, who do not live in the same household, to meet outdoors in groups of up to six people. The CEHO indicates that Regulation 6A was primarily aimed at gatherings in a private outdoor space, such as a private garden, but acknowledged it could also relate to a gathering in a public space.
- 2.17 The CEHO then clarified the rationale for the provisions in Amendment No. 5 coming into operation at different times, i.e. 5th June 2020 at 11:00pm and 7th June 2020 at 11:00pm. The CEHO states that this was because the Executive had already determined that the new relaxations provided for in Amendment No. 5 should apply from Monday 8th June 2020.
- 2.18 The CEHO states that although the amendment preceded the Black Lives Matter Protests on 6th June 2020, this was purely coincidental, and reiterated

that PSNI had the power throughout to control outdoor public gatherings by virtue of Regulation 6 and the associated enforcement provisions.

- 2.19 In light of this information, the Police Ombudsman has concluded that allegations that the PSNI had sought the amendments relating to Regulation 6A are not correct.

Section 3: Public Concerns

3.0 The Police Ombudsman received a number of concerns from the public related to the protests on the 6th and 13th June 2020. These can be summarised as follows:

- (i) A perception of inconsistency in the manner in which the PSNI policed events on 6th June 2020 ('Black Lives Matter') compared to that on 13th June ('Protect Our Monuments'). This was primarily focused on PSNI's decision to issue FPNs and caution organisers at the two events on 6th June. However, no enforcement action was taken against the 'Protect Our Monuments' demonstrators on 13th June. The general concern is that PSNI criminalised 'Black Lives Matter' protesters.
- (ii) In allowing the protests on 6th June 2020 to proceed, PSNI facilitated an illegal gathering.
- (iii) "The migrant community were made to feel unwanted, intimidated and harassed by police".
- (iv) "The ambiguity within the Regulations was used in a discriminatory way".
- (v) "The feelings of black people have been disregarded by the police".
- (vi) On 9th June 2020 during the course of a WebEx meeting (with various Black, Asian and Minority Ethnic representatives) the Chief Constable is said to have indicated that "The same police tactics of 6th June would be used at the monument protest on 13th. This clearly did not transpire".
- (vii) The messaging from police in respect of 6th June events was much 'harsher' than that for 13th June 2020.
- (viii) Individuals planning to attend the 'Black Lives Matter' protests on 6th June were informed they would be fined and prosecuted. However, on 13th June, demonstrators were encouraged by police to follow the social distancing guidelines.

- (ix) PSNI should apologise and acknowledge differences in treatment. Only after that can there be effective engagement between the PSNI and the 'migrant community'.
- (x) The issuing of fines at the Guildhall Square (Derry/Londonderry) was disproportionate to the number issued in Belfast on 6th June (57 vs 14 respectively).
- (xi) Police actions on 6th June were not balanced, proportionate or justifiable.
- (xii) The policing of the events at 6th June 'Black Lives Matter' protest have eroded confidence in police authority and the justice system.
- (xiii) A structured engagement strategy does not exist allowing Black, Asian and Minority Ethnic Communities to constructively engage with PSNI.
- (xiv) On 6th June 'Black Lives Matter' protesters had the right to protest and also freedom of speech under Articles 10 and 11 of the Convention.
- (xv) "Community engagement is important but there has to be respect and transparency. It is difficult to move forward when a community feels targeted".

Section 4: The Police Ombudsman's Investigation

4.0 The Police Ombudsman, having received a number of public concerns about policing of the 'Black Lives Matter' protests decided that Section 60A of 1998 Act was the appropriate mechanism to investigate the PSNI policy for the protests and its application.

4.1 In arriving at the decision to commence a Section 60A investigation, the Police Ombudsman identified a number of public interest factors. These were as follows:

- (i) The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 were introduced as emergency legislation against a grave global pandemic. There was therefore limited scope for Assembly consultation and legislative scrutiny.
- (ii) The legislation impacted significantly on civil liberties (including the right to freedom of expression and peaceful assembly). There has been widespread expression of public concern regarding the nature of PSNI policy and the consistency of its implementation in relation to enforcement of the legislation by way of FPNs, including suggestions of discriminatory practice.
- (iii) These factors engage issues of public confidence in policing policy which the Police Ombudsman has reason to believe are of sufficient public interest to merit an investigation in the public interest.

Terms of Reference

4.2 The Police Ombudsman finalised the following terms of reference for her Section 60A investigation:

1. Conduct an assessment of PSNI 'Gold' Command policy for the enforcement of Coronavirus Restrictions Regulations by way of Fixed Penalty Notices in order to identify the parameters and/or guidelines contained therein and the factors that influenced modifications, if any, to the policy between 23rd April 2020 and 27th June 2020.
2. Assess the effectiveness of the PSNI in communicating 'Gold' Command policy to operational police officers.
3. Establish the manner in which police implemented the PSNI's COVID-19 'Gold' policy for enforcement of the Coronavirus Regulations through Fixed Penalty Notices at the 'Black Lives Matter' protests at Custom House Square, Belfast and the Guildhall Square, Derry/Londonderry on 6th June 2020.
4. Identify any inconsistencies in the tactics employed by police, including the nature of engagement with members of the public, in their enforcement of the Coronavirus Regulations through Fixed Penalty Notices at the 'Black Lives Matter' protests at Custom House Square, Belfast and the Guildhall Square, Derry/Londonderry on 6th June 2020.
5. When compared to those employed at the 'Black Lives Matter' protests on 6th June 2020, identify any inconsistencies in the methods employed by the PSNI in enforcing the Coronavirus Regulations, particularly the issue of Fixed Penalty Notices, in relation to, but not limited to, the following protests/public gatherings:

- ‘Black Lives Matter’ protest at Writers’ Square, Belfast on 31st May 2020.
- ‘Black Lives Matter’ protest at Belfast City Hall on 1st June 2020.
- ‘Black Lives Matter’ protest at Belfast City Hall on 3rd June 2020.
- ‘Black Lives Matter’ protest at Custom House Square, Belfast on 6th June 2020.
- ‘Black Lives Matter’ protest at Guildhall Square, Derry/Londonderry on 6th June 2020.
- ‘Protect our Monuments’ protest at Belfast City Hall on 13th June 2020.

6. Secure a position from the PSNI’s COVID-19 ‘Gold’ Command in relation to inconsistencies that may be identified in the aforesaid matters.

7. Inform the Police Ombudsman of any matter which indicates that a police officer may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings.

8. Make prompt operational or strategic recommendations to the PSNI in relation to any ‘lessons learned’ with a view to improving policing policy or practice.

4.3 The Terms of Reference also state that at the conclusion of the investigation a comprehensive report is to be drafted for submission to the Police Ombudsman.

Investigation Methodology

4.4 The Police Ombudsman’s investigation examined relevant PSNI policies and how the organisation enforced ‘*The Health Protection (Coronavirus, Restrictions) Regulations (NI) 2020*’ at the ‘Black Lives Matter’ protests on 6th June and the ‘Protect Our Monuments’ protest on 13th June.

4.5 The Regulations first came into force in Northern Ireland on 28th March 2020 and have been subject to a number of amendments. The Regulations and

amendments were introduced under emergency procedure. There was no public consultation and limited scrutiny by the Assembly. This dynamic of changing government advice and response to the spread of the virus was challenging for everyone and particularly the police who have been primary enforcers of the Regulations.

4.6 The investigation examined how PSNI's overarching strategies and policies for the event were applied to the protests, including enforcement action and any follow-up investigation.

4.7 The following investigative steps were undertaken:

- (i) A chronology was compiled reflecting the evolving nature of the COVID-19 Regulations. This charted the amendments to the Regulations from their introduction in March 2020 through to July 2020;
- (ii) Investigators engaged with a number of organisers and participants of the 'Black Lives Matter' protests and other persons wishing to make complaints or raise concerns;
- (iii) The policing of 'Black Lives Matter' protests held between 29th May and 3rd June 2020 was reviewed;
- (iv) A review of the PSNI's criminal justice strategies, related policy and supporting operational orders relevant to the events of 6th and 13th June 2020 were analysed. The implementation of the orders at the relevant events was examined as were the precursor. All related policing responses at and post the events were examined;
- (v) The Police Ombudsman met and had discussions with representatives of the Equality Commission and the Northern Ireland Human Rights Commission.

- (vi) Investigators engaged with a number of police officers including senior police officers performing key command roles in respect of the events on 6th and 13th June 2020:
- The Gold Commanders for 6th and 13th June.
 - The Assistant Chief Constable (ACC) responsible for oversight of the PSNI's 'Equality, Diversity and Good Relations Strategy'.
 - A number of Silver and Bronze Commanders.
 - 13 police officers who were deployed to the events on 6th and 13th June 2020.
 - A number of other officers engaged in liaison with minority groups.
 - The investigators also liaised with members of the PSNI's Ethnic Minority Police Officers Association.
- (vii) Enquiries were made with local councils and other organisations to clarify, as far as possible, the planning undertaken for the 'Black Lives Matter' protests on 6th June 2020 in Belfast and Derry/Londonderry.
- (viii) All available PSNI Body Worn Video (BWV) footage and other relevant CCTV footage was viewed, and analysed together with relevant footage secured by the PSNI Evidence Gathering Teams (EGT).
- (ix) Radio transmissions were reviewed.
- (x) PSNI computerised logs and post incident investigation actions were obtained and scrutinised.
- (xi) A review of PSNI material in relation to its equality and human rights approach, the equality scheme and PSNI action plans.
- (xii) Careful examination of all media reporting and public commentary was undertaken.

- (xiii) Evidence arising from these enquiries has been secured, analysed and assessed by investigators under the direction of the Police Ombudsman's Senior Director of Investigations and Senior Investigating Officer. Given the complexities of the Regulations and the human rights issues engaged in the protests, the Director of Legal Services and her legal team undertook extensive legal research on human rights principles, guidance and case law.

Section 5: Background to the Black Lives Matters Protests

5.0 Prior to events of 6th June 2020 in Belfast and Derry/Londonderry, there had been a number of 'Black Lives Matter' related protests held in Northern Ireland. In this section of the report, a summary of each of the four protests is provided. This includes PSNI actions both prior to and after each protest.

Protest at Free Derry Corner on 29th May 2020

- 5.1 The Police Ombudsman's investigation established that a 'Black Lives Matter' event was held on 29th May 2020 at 'Free Derry Corner' at which no police were present. No follow up enforcement action was taken.
- 5.2 The public Facebook page of the organising body revealed an event being added on 27th May 2020, entitled '*Justice For George Floyd Vigil*'. It was to be held on 29th May at 7.00pm at 'Free Derry Corner'. A short time later a link was posted on Facebook to a local newspaper article discussing the event which was described as a '*Solidarity Vigil*'.
- 5.3 As at 26th August 2020, Facebook recorded that 149 people attended the event with 526 said to be interested. On the evening of 29th May 2020, photographs of the event were posted with a narrative explaining that people gathered in a symbolic gesture of international solidarity with the family of George Floyd and the wider Black Community of Minnesota. Photographs record attendees standing at a distance from each other with placards. It was difficult to determine numbers from those images.
- 5.4 A Chief Inspector within the district confirmed to investigators that there had been a 'Black Lives Matter' related vigil held at the Free Derry Corner on 29th May 2020. He had become aware of this event before it happened via social media. The Chief Inspector had contacted the organiser who stated that attendance of around thirty people was anticipated. The organiser confirmed that attendees would be in groups of six so as to comply with the Regulations.

- 5.5 The Chief Inspector spoke with his Chief Superintendent. It was agreed that police would not attend. The Chief Inspector indicated that he had no advice at that point as to whether a number of separate groups of six people attending an event would be in breach of the Regulations. The event passed without incident. There was no enforcement action taken by police either at the event or subsequently.

Protest at Writers' Square, Belfast on 31st May 2020

- 5.6 Police received information about the probability of a protest on 31st May 2020 at Writers' Square, Belfast. Officers were tasked to monitor the area and indicated that people were gathering in the vicinity of Writers' Square. A police log of the incident was commenced at 8.10pm, with officers arriving at the scene minutes later. A Sergeant and Inspector both attended. They were satisfied that the event was calm and left the area.
- 5.7 At 8.29pm it was noted by police officers present that there were approximately 150 people at Writers' Square, mostly young men and women. All were behaving calmly standing around talking to each other. Some had small homemade placards. Police noted that many were wearing masks and all were practicing social distancing. There was no central point to the protest, no speeches and no individual appeared to be in charge. Police noted that the protest was already starting to break up and the Inspector instructed that police should simply monitor the crowd as it dispersed.
- 5.8 A review of relevant CCTV footage of this event by Police Ombudsman investigators revealed that not all cameras were operational at the event. From the limited footage available, captured from a camera at Donegall Street, there appeared to be a small number of protesters and minimal police presence. Police officers were seen to converse with a number of passing members of the public. Officers did not appear to make notebook entries or issue FPNs to participants.

- 5.9 A Detective Sergeant subsequently reviewed the circumstances of the event and noted that there had been a potential breach of the Regulations. He suggested a number of actions including early engagement with the PPS, a review of social media, a full CCTV check in the vicinity and clarification of interactions between police officers and participants.
- 5.10 On 3rd June a police Constable was appointed as the Investigating Officer for the 31st May event. Enquiries were conducted with a view to identifying organisers. Police were, however, unable to identify or contact anyone responsible for arranging the protest. The investigation was filed by the PSNI pending further evidence.

Protest at Belfast City Hall on 1st June 2020

- 5.11 Police records indicate that on 1st June 2020 officers in the vicinity of Belfast City Hall reported that a 'Black Lives Matter' protest, numbering 40-50 persons, had commenced at Belfast City Hall. A police log was commenced at 12.00 noon. Within two hours the log recorded that the protest had grown to 200 attendees. The event finished without incident. Two individuals were noted as having spoken to the crowd but they were not identified as organisers of the event. All participants were noted to have adhered to social distancing. There had been no traffic disruption or 'provocative' speeches.
- 5.12 A review of relevant CCTV by Police Ombudsman investigators supports the estimate of approximately 200 persons present at this 'Black Lives Matter' protest, with participants attempting to socially distance. The protest having finished, a number of persons remained in groups not adhering to the recommended two metre distance. There was a minimal police presence which included city centre police officers on bicycles. The police did not intervene in this event. However it is evident that police had no prior notice of this event. No enforcement action was taken at the time and no police investigation followed.

Protest at Belfast City Hall on 3rd June 2020

- 5.13 The Police Ombudsman's investigation interviewed a police Sergeant and obtained an account of this event. He recalled that while on duty on 3rd June 2020 he learned of a 'Black Lives Matter' protest planned for the City Hall the same day. He knew from social media that large numbers of people had expressed an interest in attending. However, he was conscious that statements on social media did not always translate into attendance at events. He obtained the telephone number of the protest organiser, who advised that a couple of hundred people were expected to attend.
- 5.14 Police then deployed an evidence gathering vehicle and available resources, totalling about thirty officers, to Belfast City Hall. The Sergeant recorded having spoken to the organiser at the Belfast City Hall. He noted face coverings being handed out and stressed the need for social distancing of those in attendance.
- 5.15 On commencement of speeches at approximately 2.45pm the Sergeant witnessed the crowd move up towards the guest speakers. This appeared to be in an effort to hear the speakers as the sound quality of their public address system was poor. The crowd continued to grow. At 2.50pm it became necessary to begin road lane closures, culminating in a full road closure twenty minutes later. At this point the number of protesters had grown to an estimated 2000 persons.
- 5.16 At around 3.40pm the organiser approached police and requested assistance in dispersing the crowd. That is, because, although the formal event had ended, a number of individuals were continuing to address the crowd and chanting had started. The police incident log recorded that by 3.59pm the crowd was slowly starting to disperse. At 5.51pm it was recorded that the protest had almost ended but that a number of persons remained in front of Belfast City Hall gates.
- 5.17 A Chief Inspector, interviewed by my investigators, recalled the matter being discussed at the morning Area Management Meeting on 4th June 2020. He

stated that police had expected low numbers to attend the protest. As a result, only local police had been assigned to the event without additional resources being made available.

- 5.18 It is evident that unexpectedly large numbers of people attended this event. There were insufficient resources to police it. This had been the first 'Black Lives Matter' protest of this scale in Northern Ireland.
- 5.19 A police Sergeant told the investigators that his priority had been safeguarding the immediate health and safety of participants, ensuring that no-one was injured on the road or environs. His priority had been public order and public safety and compliance with the Regulations was not his primary focus.
- 5.20 A review of relevant CCTV by Police Ombudsman investigators evidenced that stewards were wearing yellow bibs at the event. However, they had not been able to ensure social distancing. Large numbers attended, with only a relatively small visible police presence, including city centre police on bicycles. At the height of the event the front of Belfast City Hall was crowded with people and the road had been closed by the PSNI. Television news footage evidenced no social distancing by the majority of attendees and substantial disruption to Belfast City centre.
- 5.21 The 3rd June event attracted significant media attention. There were a total of five reports recorded by police from members of the public complaining about the event not being banned in the context of a pandemic. There was also criticism of the perceived lack of action taken by police, with two individuals specifically enquiring as to whether protesters would be prosecuted.
- 5.22 A police Constable was appointed as Investigating Officer the following day to pursue a post-event investigation of the protest. On 8th June 2020, following discussion with the supervising Sergeant, this officer decided that the organiser was to be interviewed and CCTV and EGT material was to be reviewed to establish if any other organisers or leaders could be identified. The main

organiser and three others, thought to have been involved in the running of the event, were identified by police. The main organiser and two of these other persons have attended voluntarily for police interview, with an outstanding intention to arrange an interview of the last identified person. Prosecution files, relating to offences of assisting or encouraging the commission of an offence contrary to Section 44 of the Serious Crime Act 2007, have been prepared and forwarded for submission to the PPS in respect of two of the people interviewed.⁶

- 5.23 Police issued no 'on the spot' enforcement by way of FPN at the event on 3rd June 2020. The reason for this was that police did not anticipate that the high volume of attendees at this protest which spilled over onto the road, forcing police to take action to close the affected route. The officer in charge indicated that his priority was health and safety, ensuring that no one sustained serious injury, rather than enforcing the Regulations. Where possible, subsequent investigations followed in respect of those involved in organising or facilitating the protests.
- 5.24 Police confirmed that this event was pivotal in highlighting the need for a formal strategic response in anticipation of further 'Black Lives Matter' protests planned for 6th June 2020 in Northern Ireland.

⁶ Position as of 18th November 2020

Section 6: Policing Command Structure, Strategy and Operational Planning

- 6.0 As a result of lessons learned from the protest on 3rd June 2020, namely the likelihood of large scale attendance, and in preparation for the 'Black Lives Matter' protests on 6th June 2020, a pre-planned policing operation was initiated. A tailored Northern Ireland wide Gold Strategy was drafted, setting out the strategic objectives of the policing operation. All subsequent policy drafted was to be informed by these objectives.
- 6.1 A Criminal Justice Strategy was compiled, again applicable to all of Northern Ireland, the purpose of which was to advise any attending officers of a 'suggested course of action'. There were also Silver Tactical Plans and Bronze Deployment Plans for each protest location. Finally there were separate Operational Orders for the two locations, documents aimed at focusing and coordinating the police response towards objectives, by describing how resources were to be deployed.
- 6.2 An ACC was designated as the Gold Commander for PSNI 'Black Lives Matter' related operations at all locations on 6th June 2020. There were regional Silver Commanders appointed for the Derry/Londonderry and Belfast policing operations; a Superintendent and a Chief Inspector respectively. There were also regional Bronze Commanders for the Derry/Londonderry and Belfast operations, at Chief Inspector and Inspector level respectively.
- 6.3 The role of a Gold Commander is strategic whilst the Silver and Bronze Commanders have tactical and operational roles. Bronze Commanders carry out a supervisory function on the ground at events. They communicate with and seek authorisation for actions from the Silver Commander, who monitors the operation from a command room, and who can seek direction from the Gold Commander where necessary.

Black Lives Matter protests on 6th June 2020

Gold Strategy

6.4 The PSNI's Gold Strategy for 'Black Lives Matter' protests on 6th June 2020, sets out the strategic aims and objectives of the policing operation:

'The overarching intention of the police operation will be to discharge our Section 32 Police (NI) Act 2000 responsibilities to the public whilst protecting, as far as is practicable, the health of our staff, in light of the current Covid-19 health crisis.'

Section 32 Police Act (NI) states

'It shall be the general duty of police officers:

- To protect life and property*
- To preserve order*
- To prevent the commission of offences*
- When an offence has been committed to take measures to bring the offender to Justice.'*

In discharging our obligations above we will do so in line with the European Convention on Human Rights and within the framework of Legality, Necessity and Proportionality, with cognisance to the current Public Health Risks associated with the Coronavirus C-19 Pandemic and associated Health Protection Regulations.'

6.5 It is noted that:

“Police shall, as far as practicable, carry out their functions in co-operation with and with the aim of securing the support of, the local community and partners.

Any actions police take in relation to this policing operation must have a legal basis and should not interfere unnecessarily with an individual’s human rights and freedoms.”

6.6 A total of 19 ‘Strategic Objectives’ are listed, including the following of relevance:

- *To protect life in accordance with Article 2 European Convention of Human Rights⁷. To plan to reduce the likelihood of police recourse to the use of force particularly the use of lethal or potentially lethal force in accordance with our positive obligations under Art 2 ECHR and the McCann v UK judgement and in accordance with Art 4.2 of the PSNI Code of Ethics.*
- *To reflect the long term objectives of increasing public confidence and trust in policing through effective delivery of operations based on a confident, proportionate and appropriate response in accordance with the Policing with the Community ethos of engagement, collaborative decision making and the Authorised Professional Practice (APP) for Public Order and the PSNI Manual of Policy, Procedure and Guidance on Conflict Management.*

⁷ Article 2 – The right to life; nobody, including government, can try to end life. The government should also take appropriate measures to safeguard life by making laws to protect citizens, and in some circumstances, take steps to protect life if it is at risk. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary in defence of any person from unlawful violence, in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, and in action lawfully taken for the purpose of quelling a riot or insurrection.

- *To maximise engagement with event organisers with a view to highlighting the health risks posed by the current COVID-19 pandemic and potential offences under The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (as amended).*
- *To maximise media engagement with and discourage potential attendees in advance of the event due to the COVID-19 pandemic and potential offences under The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (as amended).*
- *To maximise engagement with likely influencers of likely attendees to discourage attendance in advance planned events.*
- *To maximise engagement with attendees on route to and present at the event with a view to discourage their attendance due to the current COVID-19 pandemic and potential offences under The Health Protection (Coronavirus Restrictions) Regulations (Northern Ireland) 2020 (as amended).*
- *To minimise the general risk to the public attending or supporting the event or engaged in protest.*
- *To maximise the safety of police officers involved, both in policing the operation with due cognisance to the ongoing COVID-19 health crisis.*
- *To facilitate peaceful protest in accordance with Articles 9, 10 & 11⁸ of the European Convention of Human Rights, and provide a lawful and proportionate response to any protest, commensurate with scale, facilitating the needs and rights of protesters whilst balancing their rights with those of the wider community impacted by the protest activity.*

⁸ Article 9 – The right to freedom of thought, conscience and religion; this right includes freedom, either alone or in community with others and in public or private, to maintain manifest his religion or belief, in worship, teaching practice and observance.

Article 10 – The right to freedom of expression; to hold your own opinions and to express them freely without government interference. This includes the right to express views aloud, for example, through public protest and demonstrations and receiving information from other people by being part of an audience.

Article 11 – The right to freedom of peaceful assembly and to freedom of association with others, including to hold meetings and demonstrations with other people.

(Public authorities may interfere with these rights, where it is lawful, necessary and proportionate, in order to protect public safety, health, the rights and freedoms of other people and..... Action is proportionate when it is appropriate and no more than necessary to address the problem concerned)

- *Where possible, plan to seek to prevent protesters causing disruption by blocking roads in the vicinity of Custom House Square.*
- *To seek to prevent public disorder and ensure the safety of members of the public, protesters and police.*
- *To take account of Section 75 of the Northern Ireland Act 1998⁹.*
- *Where negotiation and consultation fails to deliver an acceptable outcome, to enforce the law by way of a lawful and proportionate response supported by a suitably developed Criminal Justice Strategy which seeks to secure evidence, identify offenders and bring those responsible to justice.*
- *Effective use of trained Evidence Gathering teams and officers, and appropriate equipment, will be considered during planning.*
- *Commanders should be aware of associated incidents or developments in other areas of NI and ensure consistency in approach¹.*

6.7 A preferred outcome is said to be that the ‘events as indicated do not take place’. An acceptable outcome is that the events takes place ‘in a significantly reduced scale in terms of numbers’. ‘A large scale event held in breach of the Health Protection Regulations’ is described as an unacceptable outcome.

⁹ (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity-

- (a) Between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- (b) Between men and women generally;
- (c) Between persons with a disability and persons without; and
- (d) Between persons with dependents and persons without.

Criminal Justice Strategy

6.8 This document sets out the Criminal Justice Strategy in seven points:

1. *'Engage with Organisers to cancel the protest.*
2. *Engage, Explain and Encourage the participants away from the event location Transport Hubs). Consideration re imminent breach of the peace.*
3. *Engage, Explain and Encourage the participants at local roads/local car parks. Consideration re imminent breach of the peace.*
4. *Engage, Explain and Encourage the participants at the protest site with added tannoy facilities and provision of matrix sign.*
5. *Capture evidence of warnings (audible and matrix) on EGT.*
6. *Identify organisers and capture evidence – consideration to prosecution for aiding and abetting a breach of the Health Regulations (Article 6)*
7. *Once warnings are given and it is SAFE to do so use EGT/BWV to capture images of protesters who are in breach of the regulations.'*

6.9 Within the seven point Criminal Justice Strategy there is no reference to 'on the spot' enforcement. However, in a paragraph preceding that detailing the seven points above it states that;

'Practically, there is not the capacity within the Police estate to arrest everyone and convey to Custody, however the issue of COVID PNDs¹⁰ should be considered where the threshold is met (after Engage, Explain and Encourage) has failed.'

6.10 This is to be read in conjunction with the outlined seven points. The language 'should be considered' leaves significant discretion for individual officers.

¹⁰ Referred to as Fixed Penalty Notices in this report.

Silver Tactical Plan – Derry/Londonderry

6.11 The Silver Plan refers to the application of the Four 'E's by officers as a mitigation measure against a risk to the health of the community. The offences of aiding, abetting, counselling or procuring a breach of Regulation 6 and encouraging the commission of an offence contrary to Section 44 of the Serious Crime Act 2007 are noted. There is no guidance as to whom or how this is to be applied.

6.12 Under tactical options it states:

'On the day, there will be fairly swift escalation to enforcement with the issue of FPN or report for summons in respect of people found to be breaching Regulation 5 or Regulation 6, seeking authorisation for same from Silver.'

6.13 Style and tone is outlined as follows:

'To promote a positive, professional image it is essential that all officers involved in the operational delivery are briefed to ensure they are friendly, fair, accessible and confident. They should be courteous, approachable and aware of the particular community dynamics, tensions and expectations.'

6.14 Enforcement is a tactical option:

'If faced with non-compliance, officers will require the person to comply and if necessary and proportionate move to enforce their requirement – normally by way of issue of a fixed penalty notice'.

6.15 It is further added:

'The enforcement of the current restrictions should be designed to have people comply and disperse/return home, rather than to penalise those in breach of the restrictions.'

Bronze Deployment Plan – Derry/Londonderry

6.16 In addressing style and tone it outlines:

'The emphasis will be on the 4 E's (Engage, explain, encourage and enforce) in respect of the Health Protection Regulations. Given the sensitive nature of the protest, they will be friendly, fair and accessible in line with our policing with the community ethos. However, there must be robust enforcement. Any use of force will be the last resort and will be the minimum required to achieve the lawful objective.'

6.17 A phased and graduated approach is proposed by police as follows:

- Phase 1: Visibility and early engagement.
- Phase 2: The Four 'E's and deployment of resources to the outer and inner cordon points.
- Phase 3: Use of the Four 'E's; identification of offences or breaches of the Regulations at the protest, with consideration of moving to enforcement.
- Phase 4: De-escalation and return to normality as soon as it was safe to do so.

Operational Order – Derry/Londonderry

- 6.18 The Operational Order references the use of the Four 'E's. There is no explanation as to the type of enforcement action and no reference to potential offences.

Silver Tactical Plan – Belfast

- 6.19 When assessing groups at risk from COVID-19, in the form of participants, the hazard mitigation is:

'Engage, Encourage, Explain and Enforcement of Health Regulations.'

- 6.20 The Plan identifies the contingency of a breach of COVID Health Regulations with the response outlined as:

'Engagement, Explain, Encourage, Enforcement. Criminal Justice Strategy to be implemented. Deploy EGT and gather best evidence.'

- 6.21 At the time of writing the Silver Plan the updated Criminal Justice Strategy is still awaited. There is no specific reference to the use of FPNs or Community Resolution Notices (CRNs).

Bronze Deployment Plan – Belfast

- 6.22 The Bronze Plan for Custom House Square indicates that the style and tone will be - 'no surprises' approach based on the principle of policing with consent. It is said that:

'The operation will be flexible enough to allow for a graduated response to developing incidents. All police officers deployed in this operation will as a default present in an approachable, accessible and friendly demeanour.'

- 6.23 The Bronze plan outlined scenarios or contingencies, such as disorder or traffic disruption, with proposed mitigation and actions. The issue of how police will address the scenario of a large gathering in breach of the Regulations is not discussed. There is no reference to the Four 'E's or enforcement of Regulations within this plan.

Operational Order – Belfast

- 6.24 The Operational Order notes that the event is to be policed in five phases in a graduated and proportionate manner. Police action during each phase is not detailed in this document.

- 6.25 The Order states:

'Retrospective arrests and/or prosecutions will be considered depending on the nature and seriousness of offences.'

- 6.26 However there is no reference to the types of offences that organisers or others, who have not committed public order offences, may be arrested or prosecuted for. The Order does not reference the Four 'E's or methods of 'on the spot' enforcement (FPNs or CRNs).

Protect Our Monuments on 13th June 2020

- 6.27 The PSNI's planning for a 'Protect our Monuments' protest on 13th June 2020 at Belfast City Hall was similar to that undertaken for the protests on the 6th June. Between 6th and 13th June there had been a change to the Regulations. The number of persons permitted to gather outdoors increased from six to ten. The enforcement powers of the police provided for in the Regulations remained the same.

- 6.28 In preparation for the 13th June the PSNI had received information that they may have to deal with gatherings of multiple groups of different motivations in

multiple locations. This differed to the previous weekend whereby gatherings were in support of a single issue and ‘common purpose’. In planning for the 13th June the PSNI were cognisant of the fact that the protest on the 13th coincided with the first week of trading for Belfast City Centre post ‘lockdown’ and as such due consideration was given to the economic situation and the general public at large.

Gold Strategy on 13th June 2020

6.29 The Gold Strategy was to apply to all protest activity within Northern Ireland between 12th and 14th June 2020. There are 19 strategic objectives outlined; most are similar to those in the Gold Strategy for 6th June protests.

6.30 The overarching aim was outlined as:

‘To keep people safe by delivering an effective, proportionate and human rights compliant policing response to protest activity whilst protecting the public and health of our staff in light of the current COVID-19 pandemic.’

6.31 A strategic objective (not evidenced in the Gold Strategy in respect of 6th June) is set out as:

- *‘To deliver a defined and specific engagement plan to support ‘real time’ dialogue with the affected communities (not just organisers).*
- *To engage in an Independent Advisory Group for Black, Asian and Minority Ethnic communities.’*

Criminal Justice Strategy - 13th June 2020

6.32 The Criminal Justice Strategy comprises eight points, seven of which are identical to those in the 6th June Criminal Justice Strategy. Point eight details information which reflects the introductory paragraph to the Criminal Justice Strategy on the 6th June.

6.33 The Criminal Justice Strategy advised that officers '*should consider*' the following as a course of action:

1. *'Engage with Organisers to cancel the protest.*
2. *Engage, Explain and Encourage the participants away from the event location Transport Hubs). Consideration can be given to powers re: imminent breach of the peace.*
3. *Engage, Explain and Encourage the participants at local roads/local car parks. Consideration re imminent breach of the peace.*
4. *Engage, Explain and Encourage the participants at the protest site with added public address facilities and provision of matrix sign. Suggested forms of words are attached to this document.*
5. *Capture evidence of warnings (audible public address and matrix) on EGT platforms.*
6. *Identify organisers and capture evidence with a view to consideration of report to PPS for prosecution for aiding and abetting a breach of the Health Regulations (Article 6).*
7. *Once warnings are given and it is **safe** to do so use EGT/BWV to capture images of protesters who are in breach of the regulations with a view to future identification and report to PPS.'*
8. *Enforcement – Issue of COVID PNDs should be considered where the threshold is met (that is after Engage, Explain and Encourage has failed.)'*

6.34 As with the 6th June strategy the caveat that the strategy '*should*' be considered leaves a considerable margin of discretion with officers. The issue of '*on the spot*' enforcement is incorporated into an eighth point. The first seven elements are similar. As such, reading the documents as a whole, the Strategy for 13th June is in effect the same as it had been for the 6th June. It is evident that the Gold Strategy for 13th June was erroneous in that it had not quoted the updated Criminal Justice Strategy.

Silver Tactical Plan

- 6.35 The Silver Plan identifies that there had been criticism of police actions at the protest of 6th June at Custom House Square. It was noted that a number of FPNs and CRNs were issued to attendees. Organisers and speakers were cautioned that a file would be submitted to the PPS. It was noted that police became overwhelmed by the number of attendees and were unable to issue FPNs/CRNs to everyone. A preferred outcome is described as the '*events as indicated do not take place*'. An acceptable outcome is described as the event takes place '*in a significantly reduced scale in terms of numbers*'. An unacceptable outcome is described as a '*large scale event (or multiple large scale events) held in breach of the Health Protection Regulations*'. These mirror the outcomes outlined in the Gold Strategy for the 6th June events.
- 6.36 Those taking part in the event were identified as being at high risk from COVID-19 and use of the Four 'E's is referred to as a hazard mitigation in respect of such.
- 6.37 The event is divided into four phases as follows:
- Phase 1: Engagement with organisers to deter/prevent the event.
 - Phase 2: Police presence at transport hubs, car parks and egress routes.
 - Phase 3: Actions at City Hall/Stormont.
 - Phase 4: Reversal to pre-protest phase.
- 6.38 The first three phases all refer to implementation of Criminal Justice Strategy but does not explain what this actually is. It is documented by the PSNI that at the time of writing the Silver Tactical Plan the updated Criminal Justice Strategy was awaited.

- 6.39 The Silver Tactical Plan identifies the contingency of a breach of COVID Health Regulations with the response outlined as;

'Engagement, Explain, Encourage, Enforcement. Criminal Justice Strategy to be implemented. Deploy EGT and gather best evidence. Officers to maximise use of BWV and ensure OEL's are updated prior to termination of duty. Deploy EGT and gather best evidence.'

- 6.40 There is no reference in the plan to the use of FPNs or CRNs or how organisers are to be dealt with.

Bronze Deployment Plan

- 6.41 The Bronze Deployment Plan states:

'It is envisaged that this will be an event with signage and verbal altercation, which will be monitored to ensure that offences specifically relating to hate crime are dealt with robustly using the Criminal Justice Strategy. The Health Protection (Coronavirus, Restrictions) Regulations (NI) 2020 will also be enforced using the 4 E's approach of Engage Explain Encourage and lastly Enforce'.

- 6.42 The document outlines a number of scenarios or contingencies, including disorder or traffic disruption with proposed mitigation and actions to be taken. None of these address policing at a large gathering in breach of the Regulations.

Operational Order

- 6.43 It is reiterated that as per the Gold Strategy the default style will not prevent officers from taking action to enforce the law and that the Four 'E' principles will remain in place. There is no reference within the Operational Order to CRNs or FPNs.

Observations

- 6.44 Much repetition and minimal direction of practical assistance to police was apparent in the extensive material produced in the course of the relevant planned policing operations. This omission is significant in respect of Operational Orders given that these documents represent the key reference material used by supervising officers to brief their constables.
- 6.45 Although a matter of public concern, the Strategy for 13th June is in effect the same as it had been for the 6th June. Inconsistencies in levels of enforcement at the gatherings on 6th and 13th June may have been as a result of other factors impacting the implementation of the police policy on the day. The next section of this report describes the events at the protests of 6th and 13th June.

Authorisation for Issuing Fixed Penalty Notices

- 6.46 A difference in police approach to the events of 6th and 13th June, was that ACC authorisation was required at the 13th June events before an officer could enforce the Regulations.
- 6.47 When the Regulations commenced (28th March 2020) the authority to issue FPNs for breaches was delegated to individual police officers. In May 2020, the PSNI's 'Gold' COVID-19 Command directed that FPNs were to be authorised by the PSNI COVID-19 control centre. In practice a phone call to the control centre was required. The numbers of FPNs issued substantially reduced following this change.
- 6.48 This policy was altered again for the protests on 6th June 2020. PSNI stated that due to the 'pre-planned' nature of the police operations, supervisors 'on the ground' were permitted to authorise the issuing of FPNs. Following public criticism of the enforcement of the Regulations at the events on 6th June the PSNI policy was changed again for 13th June events. Enforcement action by

FPNs was to commence only with the approval of the Gold Commander (the fourth 'E').

Section 7: Black Lives Matter Protests

- 7.0 The Police Ombudsman's investigation obtained and reviewed a significant volume of evidence during the course of enquiries into events of 6th and 13th June 2020. Only the information which is relevant to the Police Ombudsman's conclusions is included in this Report.
- 7.1 This section highlights elements of the policing approach to the two events on 6th June 2020 that are relevant to public concerns focused on the inconsistency of policing between the two protests.
- 7.2 On 6th June 2020, PSNI were deployed to two 'Black Lives Matter' protests; one at Guildhall Square, Derry/Londonderry and the other at Custom House Square, Belfast.
- 7.3 Consistent with the Criminal Justice Strategies, police engagement with the organisers prior to both events focused on persuading them to cancel the protests in the interests of public health.
- 7.4 It is evident that although the strategies and tactical plans comprising PSNI policy for both protests were similar, the enforcement outcomes for both events differed significantly.
- 7.5 A total of 57 FPNs were issued at Derry/Londonderry and no CRNs. In Belfast, 14 FPNs and 3 CRNs were issued. This clear inconsistency in the level of enforcement action was highlighted in the media reports and by the public.

The Regulations

- 7.6 PSNI's understanding of the Regulations at a senior level in both Belfast and Derry/Londonderry was that Regulation 6 did not permit more than six people to be gathered for a 'common purpose'. Multiple groups of six persons were prohibited when they were present for 'a common purpose'.
- 7.7 This approach to the 'Black Lives Matter' protests contrasts with that of other UK police forces who sought to police protests proportionately to ensure that participants were expressing their right to protest in a COVID-19 compliant way.
- 7.8 PSNI's view of the Regulations and public health considerations was that they took primacy over the protesters' rights under Article 10 and 11 of the Convention.

Protest at Guildhall Square, Derry/Londonderry on 6th June 2020

Pre-Event Engagement

- 7.9 Prior to the Guildhall Square protest on 6th June 2020, the PSNI's Bronze Commander engaged with the organiser for that event explaining that the main concern was to ensure the protection of public health. He warned the organiser of the consequences of any breach of the Regulations. A key aim was to persuade the organiser to cancel the protest and she was cautioned in respect of potential offences, contrary to Section 44 of the Serious Crime Act 2007. The Bronze Commander also made contact with local political and business figures, as a result of which one cross-community group issued a statement calling for the event to be cancelled.

Police Briefings

- 7.10 The PSNI's Bronze Commander delivered two briefings to police officers deployed to the protest at the Guildhall Square on 6th June 2020. The first briefing was at 11.45am for those officers who were to be tasked to transport hubs. Consistent with messaging from Gold Command, the Four 'E's message was reiterated and instructions given to officers that non-compliance would result in FPNs being issued. All officers were reminded that only a maximum of six persons were permitted to be in attendance for a single protest.
- 7.11 The second briefing, for officers to be deployed at the Guildhall Square, was delivered by the Bronze Commander at 1.00pm. It was again emphasised that only six persons were permitted to be present for a 'common purpose'.
- 7.12 The Bronze Commander indicated and noted that human rights considerations were addressed. He also reminded officers that under Section 32 of the Police (Northern Ireland) Act 2000 police would 'normally' facilitate peaceful protest. Officers were briefed that they were to conduct themselves in a neighbourhood policing style. Organisers were to be dealt with by way of Section 44 cautions and FPNs were to be issued in respect of attendees (aged eighteen or above).
- 7.13 The Bronze Commander indicated that the threshold for arrests was high and alerted officers to the potential for unconscious bias. The protest was scheduled to start at 3.00pm. At approximately 1.20pm, the Bronze Commander received a radio transmission notifying him that a number of protesters had started to gather at the Guildhall. This occurred as the briefing ended.

The Guildhall Protest

- 7.14 The organiser of the protest at Guildhall Square spoke with Police Ombudsman investigators. She stated that on arrival at Guildhall Square police were 'everywhere' and police Landrovers were blocking the entrances to the Square.

This was described as ‘shocking’ causing her to fear there had been a serious incident.

- 7.15 The PSNI’s Bronze Commander noted that his initial intention had been for officers to deploy to the Guildhall on foot from Strand Road Police Station. However, when protesters arrived earlier than anticipated, he was forced to instruct officers to travel in Landrovers, resulting in more vehicles in the vicinity of the Square than he would have liked.
- 7.16 On arrival at Guildhall Square, the Bronze Commander attempted to explain to the organiser that in normal circumstances police would facilitate a peaceful protest but that the Regulations impacted on this policing approach. The organiser stated that she sought to encourage protesters to socially distance and stay in groups of 6. However, police then advised that only a total of 6 people were permitted to be present for the purpose of the protest.
- 7.17 Three public warnings were issued by the Bronze Commander to those gathered at the Guildhall via a Landrover Public Announcement system which was audible throughout the Square. These were given prior to commencement of enforcement action being taken. The third warning was described as being ‘final’ and accompanied by the message that police would have to ‘take action to apply the Health Protection Regulations’. However, the warnings proved ineffective in persuading protesters to disperse.
- 7.18 The event passed without disorder. No arrests were made. No force was used by police on any person. There were no complaints made by members of the public about the conduct of individual officers. Video footage evidences that exchanges between police officers and members of the public were at all times courteous and respectful. However, the majority of protesters chose to remain and 57 FPNs were issued.

- 7.19 Police officers were consistent in emphasising that they did not take issue with the 'Black Lives Matter' cause. Officers were captured on BWV expressing support and understanding for the principles underpinning the protest. Police messaging was that under normal circumstances the protest would be facilitated, however due to the pandemic, the protection of public health was paramount. The PSNI overriding aim was to keep the public safe.

Enforcement Action

- 7.20 Between 2.25pm and 3.25pm 57 FPNs were issued in the vicinity of the Guildhall Square for offences under the Regulations. Of these, 46 were issued before the official start time of 3.00pm. No FPNs were issued after the protest's official end time of 4.00pm.
- 7.21 Five individuals were cautioned for offences contrary to Section 44 of the Serious Crime Act 2007. This comprised the main organiser and four other persons who had acted as volunteers at the event.
- 7.22 Video footage evidences 12 individuals receiving FPNs. Of these, eight FPNs were issued to protesters at the Square. The remaining four FPNs were issued at police lines positioned at entrances to the Square.
- 7.23 The Silver Tactical Plan stated that enforcement should be designed to ensure the protesters complied with police instructions to disperse or return home rather than to result in penalisation for those in breach of the Regulations. Only one person seen on the available video footage receiving a FPN left the protest. Other individuals who were issued with FPNs chose to remain. All enforcement was suspended during nearly nine minutes of silence as a mark of respect.

Fixed Penalty Notice Books

- 7.24 Specific COVID FPN books were created for the purpose of enforcement of the Regulations. The Notice had 3 tick-box options set out for offence details. The

first was contravention of Regulation 8(1). This can include a breach of Regulation 5, 6 or 6A. The second offence option was for a breach of Regulation 8(2). This relates to obstruction of a person carrying out a function under the Regulations. The third offence option was a breach of Regulation 8(3). This relates to contravention of a direction or failure to comply with a reasonable instruction or prohibition notice. It is specified on the FPN that only one offence is to be selected per recipient.

- 7.25 Of the 57 FPNs issued at the Guildhall Square, 31 were issued for breaches of Regulation 8(1), 23 for breaches of Regulation 8(3), and 2 were, contrary to the instructions on the Notice, issued for breaches of both Regulations 8(1) and 8(3). One FPN had no offence selected on its face.
- 7.26 Regulation 9(4)(a) states that a FPN must *'give reasonably detailed particulars of the circumstances alleged to constitute the offence'*. This requirement may not be fulfilled by simply ticking an 'offence' box. There is a section for additional notes on the FPNs. This can be used by officers to provide additional detail. The additional notes section was blank on 39 of these FPNs. A number of Notices contained minimal information. The failure to meet the requirement of Regulation 9(4)(a) may call into question the validity of these Notices.

Social Distancing

- 7.27 Social distancing was evident at the start of the event. BWV and CCTV for this time evidences small numbers of protesters present. Those present were standing at a distance apart. These protesters were not standing on pre-placed markers and marshals were not enforcing social distancing. PPE and sanitisers as well as masks were distributed by volunteers from tables around the Guildhall Square. The majority of protesters wore face coverings. There have been differing accounts of the numbers of attendees ranging from 500 – 800 to 1,000 – 1,200 at the height of this event. As numbers increased social

distancing was not maintained. The Bronze Commander confirmed that there was no social distancing at the egress of the event.

Communication

7.28 There was a clear and structured approach to policing on the day, which was consistent with the Gold, Silver and Bronze Strategies and Plans. Effective communication was evident to Police Ombudsman investigators from examination of radio transmissions. The Bronze Commander regularly re-enforced key messages, regarding the approach to be taken, to all officers. All significant incidents or matters of note during the protest were communicated by radio. Constant interaction between the Silver and Bronze Commander was also evidenced.

Post-Event Police Investigation

7.29 Police were slow to commence an enforcement investigation post the Guildhall Square protest. Records indicate that a police Constable was not appointed an Investigating Officer until 24th August 2020 with BWV and EGT footage subsequently collated. Organisers were to be cautioned in respect of the offence of Section 44 of the Serious Crime Act 2007 together with breaches of the Regulations and police invitations for these persons to attend for interview were extended.

7.30 No interviews have taken place but a single prosecution file has been forwarded for submission to the PPS in respect of the main organiser.¹¹

¹¹ Position as of 17th November 2020

Protest at Custom House Square, Belfast on 6th June 2020

Pre-Event Engagement

- 7.31 The Police Ombudsman's investigation has established that PSNI were initially unclear as to the identity of the organiser for the Custom House Square event. A number of organisations were approached by police seeking to clarify this.
- 7.32 An individual police believed to be the organiser was subsequently identified. She did not admit to being the organiser for the event but acknowledged membership of the organising board. Attempts were made by police to persuade her to cancel the event as it was believed social distancing would be challenging. A key police concern was the public health risk to the community from a large public gathering.
- 7.33 The overall policing strategy prior to the Custom House Square protest was to persuade those involved to cancel the event. Hate Crime Officers contacted a number of Black, Asian and Minority Ethnic group members asking them to use their influence to cancel the event.

Police Briefing

- 7.34 The Silver Commander for the Custom House Square protest briefed officers on the morning of 6th June 2020, where background to the event was explained. This included the 'Black Lives Matter' protest of 3rd June 2020. The Chief Inspector reminded officers that they were to engage in a respectful and professional manner. Emphasis was placed on engaging with protesters before they entered Custom House Square with a view to requesting dispersal.
- 7.35 The Four 'E's were addressed and leaflets were given to officers for distribution to protesters and to assist officers in explaining the Regulations.

- 7.36 The threshold for arrest was high. The briefing clarified that individuals were not to be arrested for failure to provide personal details. Enforcement tactics communicated at the briefing identified two officers whose role was to caution organisers for offences (contrary to Section 44 of the Serious Crime Act 2007). Other protesters were to be issued with FPNs when appropriate, CRNs were to be used at police officers' discretion.
- 7.37 Present at the briefing were Bronze Commanders, Unit Commanders, Tactical Support Group officers and Supervising Sergeants. Supervisors were required to cascade the briefing to officers not in attendance.
- 7.38 The Silver Commander explained to my investigators that not all officers could be in attendance at his briefing. This was because of the number of officers and social distancing requirements at the venue for the briefing.

The Protest

- 7.39 An individual associated with organisation of the Custom House Square protest informed the Police Ombudsman's investigation that there were approximately 30 volunteers assisting at this protest. The Square was measured out with 2½ metres between each marker. It was further confirmed that they intended to brief stewards at 1.00pm, as to their respective roles and responsibilities. However these plans were interrupted by police. This individual found the police presence unexpected and intimidating.
- 7.40 The policing plan was aimed at officers speaking to all protesters as they arrived at the Square. The Four 'E's were to be utilised. At the event there were two tannoy warnings read by the Bronze Commander over a police Landrover public announcement system. Attendees were informed that they were in breach of the Regulations and should move on. Should they fail to do so they may be prosecuted. Protesters ignored the warnings and did not move away.

- 7.41 Officers recalled that the numbers of people arriving made it impossible to stop protesters as they crossed the police lines. Police officers found it challenging to encourage protesters entering the Square to queue and speak to the officers in order to follow the Four 'E's' guidance.
- 7.42 One officer explained that while police were interacting with one member of the public, the crowd behind would take advantage and 'rush' through. This caused frustration among officers. The Silver Commander noted in his account to investigators that protesters descended upon the Square in a short timeframe of approximately 30 minutes. Crowds arrived faster and in greater numbers than had been anticipated.
- 7.43 Police officer accounts reflect confusion about the policing approach. A Sergeant who was present at the main briefing, stated his understanding was that officers were to address the three 'E's'. Enforcement was not an option until authorised. Having briefed his Constables, he believed that the policing approach changed with a greater emphasis on enforcement. Another officer recollected that when speeches began, the Silver Commander directed that FPNs would no longer be issued. A third police officer recalled a radio transmission directing that all protesters be let into the square. All other evidence suggests that none of these directions were issued.
- 7.44 BWV recorded one officer stating that FPNs 'are just being given to stewards and organisers'. This was contrary to the earlier Silver Commander's briefing that organisers and marshals were to be cautioned in respect of a potential offence contrary to Section 44 of the Serious Crime Act 2007. Despite that direction police issued a FPN to an organiser. Officers were unclear as to how to treat those classifying themselves as 'volunteers'.
- 7.45 It is noteworthy that there was no public disorder and no arrests made by police at the protest. A Bronze Commander told my investigators that he believed those who refused to provide personal details were to be arrested. This was not in accordance with the Silver Commander's briefing. A review of CCTV

footage evidenced four officers approaching a black male who had spoken at the event. A large crowd gathered around this man who appeared to become agitated by the police action. A few minutes later the police officers retreated and the crowd applauded. A Sergeant confirmed to my investigators that her officers had been directed to arrest the individual, who had become aggressive and refused to provide his personal details. They were about to follow this instruction when directed otherwise by the Silver Commander.

Respect and Courtesy

- 7.46 A review of all video footage provided that police officers' conduct and manner was respectful, friendly and courteous. Officers clearly articulated that where a gathering was in excess of six people this was a breach of Regulation 6. In contrast with the Guildhall protest, police communication at the Square did not emphasise the public health message. Neither was there an acknowledgment that under normal circumstances police would have facilitated the protest as evidenced in the policing approach to the Guildhall protest. Officers who provided accounts to my investigators recalled protesters being generally polite and respectful. These accounts together with video footage evidenced protesters who received FPNs, accepting them without contention. Many of the protesters believed they were making a statement of principle. One officer described how engagement had been difficult as people consistently pointed out that they were socially distancing and were wearing protective masks and gloves. Protesters did not appear to understand that they were part of a 'gathering' for the purpose of the Regulations.

Enforcement Action

- 7.47 At the protest 14 FPNs and three CRNs were issued between 1.20pm and 4.20pm. Eleven of the Notices were issued before the official start time of 3.00pm. Three were issued during the protest, and the remaining three Notices after the official end time of 4.00pm. BWV shows eight FPNs being issued, three of these were given to individuals wearing yellow bibs (volunteers).
- 7.48 Officers in their accounts recalled a number of protesters leaving after engaging with police. However, BWV evidences that protesters remained after receiving FPNs.
- 7.49 All of the FPNs issued at Custom House Square were for a contravention of Regulation 8(1). This involved a breach of Regulation 5, 6 or 6A. Of the 14 FPNs, four were completely blank at the additional notes section. Others contained little detail. The lack of reasonably detailed particulars, as required by regulation 9(4)(a), may render the FPNs invalid.

Social Distancing

- 7.50 Police Ombudsman's investigators estimated that approximately 1,000 protesters attended the Custom House Square protest. There are no official figures although some commentary estimated 2,500 attendees. Overall, police officers agreed the event had been well organised. Footage evidenced the protesters wearing masks and gloves and people in the Square adhered to social distancing by standing on markers. Evidence suggests that it was on the periphery of the Square that people were close together. It is evident that police caused a 'bottle neck' by stopping protesters entering the Square. This caused protesters to crowd together and prevented social distancing.

Communication

7.51 There was a lack of consistency in messaging to police officers. Those who attended the Silver Commander's briefing did not recall the same directions being given. A review of radio transmissions evidenced a lack of reinforcement of the policing strategy during the protest. Some officers were communicating by way of mobile telephones, others used their radios. This caused a lack of uniformity in understanding of key messages. There were examples of decisions being made without the authority of the Silver Commander and later having to be reversed.

Post-Event Police Investigation

7.52 On 7th June 2020 a Detective Inspector reviewed events and police actions relating to the protest by reference to the Criminal Justice Strategy. On 8th June 2020 a police Constable was assigned as Investigating Officer. This officer conducted a review of all material, attempting to identify a large number of suspects which included stewards, suspected organisers and speakers. Three individuals, known to comprise the main organiser and two speakers, have been interviewed in respect of Section 44 of the Serious Crime Act 2007 offence, with prosecution files subsequently submitted to the PPS. Police are to interview four individuals in relation to their involvement at the event.¹²

Enforcement – Belfast and Derry/Londonderry

7.53 On 6th June 2020 lower numbers of FPNs were issued at Custom House Square when compared with the protest at the Guildhall Square. This arose from the following factors:

¹² Position as of 18th November 2020

- i. There was confusion among police officers at the Custom House Square protest due to a lack of consistent messaging. In contrast officers at the Guildhall Square were clear as to their role in enforcing the Regulations.
- ii. Enforcement at Custom House Square mainly occurred at the perimeter of the Square as members of the public entered and left. However, enforcement action took place both within and at the perimeter of the Guildhall Square.
- iii. Police Officers at the two protests adopted different practices for issuing FPNs. Officers at the Guildhall Square applied the same reference number to each FPN issued. However, at Custom House Square, unique reference numbers were obtained for each FPN. This practice required telephone contact with police control centre on each occasion that an FPN was issued. This practice caused the process to be more time consuming.

Section 8: Protect Our Monuments

Policing Context

- 8.0 I am mindful that the context and circumstances for the policing of the demonstration on 13th June 2020 differed from 6th June 2020. The Regulations had changed to permit up to 10 people to gather outdoors and 'lockdown' restrictions had eased to allow City Centre shops to open. There were also a number of gatherings anticipated by police across Northern Ireland.
- 8.1 Police have stated that their plans for 13th June 2020 were designed to address multiple potential gatherings over the weekend of 12th - 14th June 2020. This was unlike policing operations on 6th June 2020, which were focused on 'Black Lives Matter' events.

Protect our Monuments movement

- 8.2 A different Gold Commander was appointed and tasked with oversight of the potential protests across Northern Ireland. The officer stated that she was aware that the consistency with which all of these events were policed would be scrutinised and the subject of potential criticism. This led to a decision that the policing strategy would focus on the three 'E's with the fourth 'E' (enforcement of the Regulations) being implemented only with the express permission of the Gold Commander.
- 8.3 Post the demonstration, no enforcement action was taken by police against those who gathered in support of 'Protect Our Monuments' outside Belfast City Hall on 13th June 2020. Other than a small number of 'flag protesters' in the same vicinity, no other anticipated gatherings took place.
- 8.4 The events of 13th June 2020 at Belfast City Hall are outlined in this section of the Report. This section also highlights the differences in policing approach to

enforcement of the Regulations in comparison with the approach to events on 6th June 2020.

Pre-Event Engagement

8.5 The Gold Strategy for 13th June, unlike the 'Black Lives Matter' events included a bespoke engagement plan to support dialogue with ethnic minority communities. A Chief Inspector was appointed to the role of Community Engagement Bronze Commander. He composed a plan setting out the purpose of engagement as follows:

- *'To ensure effective dialogue with Organisers of any events linked to BLM.*
- *To ensure effective dialogue with those community groups who may be impacted by further demonstrations.*
- *To provide reassurance and support to communities and partners.*
- *To identify early warning indicators of tensions.*
- *To collate relevant and timely information and intelligence.*
- *To provide information in line with corporate messages and principles.'*

8.6 Engagement with organisers on 6th June focused on seeking cancellation of those events. A sea change is evident in the approach to events planned for 13th June. The strategy reflects an overarching principle to increase trust and confidence in ethnic minority communities.

8.7 The strands of the engagement strategy were identified by police as follows:

1. *'Communities and local community groups in particular Black, Asian and Minority Ethnic groups and communities likely to be most at risk of an adverse impact.*
2. *Political representatives including MPs, MLAs, and locally elected members.*

3. *The local business community.*
4. *Statutory and non-statutory key partners.*
5. *Voluntary and third sector groups.'*

- 8.8 Police developed a Black, Asian and Minority Ethnic engagement plan which identified contact with seven ethnic minority groups and organisations between 11th and 12th June 2020. However the Criminal Justice Strategy retained a focus on engagement with organisers for the anticipated events aimed at cancellation. PSNI Neighbourhood Officers were unsuccessful in identifying organiser(s) of 'Protect Our Monuments' from contacts within the 'Protestant Unionist Loyalist' (PUL) community (as described by PSNI).
- 8.9 A further 'Black Lives Matter' protest on 13th June was anticipated with 'Protect Our Monuments' as a counter-demonstration. Police made contact with organisers of previous 'Black Lives Matter' protests. A further protest was not confirmed.

Police Briefing

- 8.10 The Silver Commander gave the briefing on 13th June 2020 which addressed all potential gatherings in Belfast that day. All police officers to be involved were in attendance. The Gold Strategy was to be applied to all events occurring that weekend to ensure a consistent approach to enforcement of the Regulations.
- 8.11 It was noted at the briefing that there had been criticism of the PSNI for their policing of the 'Black Lives Matter' protests on 6th June 2020. Police Ombudsman investigators spoke with officers who recalled that they were briefed to focus on the three 'E's. Enforcement remained an option. However, authority to issue FPNs was to be obtained from the Silver Commander who would consult with the Gold Commander in this regard.

The Protest

- 8.12 A 'Black Lives Matter' protest did not take place at Custom House Square on 13th June 2020. Therefore officers deployed to that location were not required and policing operations in Belfast were concentrated on events at Belfast City Hall.
- 8.13 Radio transmissions reviewed by the Police Ombudsman's investigators evidence that at 11:33am police engaged with a number of small groups of people at Donegal Square West. They did not admit to being present for any particular reason, stating that they were in social bubbles and that no more than ten persons would be together at any one time.
- 8.14 At 11:57am the Silver Commander sought clarification from the Belfast City Hall Bronze Commander as to whether, in his assessment, these groups were in compliance with the Regulations. The Bronze Commander responded that *'taking them individually yes, if you make the assumption they are gathered for a 'common purpose' you could argue no'*.
- 8.15 There were three warnings via a police Landrover public announcement system given to the groups that had gathered at Belfast City Hall. These were pre-recorded automated messages. The warning informed attendees that gathering in groups of more than ten people was an offence under the Regulations. Further, if they did not disperse they would be liable for prosecution. There was no reaction from the crowd other than some cheering.
- 8.16 At 12:28pm the Silver Commander requested by radio that all officers make maximum use of the three E's; to engage, explain, and encourage the crowd not to gather in groups of more than ten. A few minutes later the Community Engagement Bronze Commander reported speaking to different groups but no-one identified themselves as an organiser. Radio transmissions indicate that protesters were being advised by police to remain in groups of ten.

8.17 A number of police officers told my investigators that the groups at the City Hall believed there was going to be a 'Black Lives Matter' protest at that location at 1.00pm. Police asked 'Protect Our Monuments' protesters to leave the area if there was no 'Black Lives Matter' protest occurring by 1.00pm. The police style and tone of engagement with the 'Protect Our Monuments' protesters was one of persuasion and negotiation. Police radio transmissions at 12.55pm noted that the crowd may be thinning out.

8.18 Unlike police tactics on 6th June 2020, there was no BWV activated to record police interactions with any individual on 13th June 2020. The Operational Order required the use of BWV only when an officer was '*invoking a police power*'. Officers did not invoke police powers on 13th June. In contrast on 6th June police chose to record key engagements with members of the public, even when not initiating enforcement action. The operational orders for 6th and 13th June contain the same direction:

'When using body worn cameras, remember:

- The baseline for their use is if you are invoking a police power or going to make a notebook entry that you should have considered turning it on.*
- If you decide not to turn it on, as it is individual officers' decision, you should consider making a notebook entry as to why you didn't record.*
- Do not use cameras to record indiscriminately entire duties or patrols.*
- Use of BWV will be incident specific.*
- Officers will use common sense and sound judgement when using BWV, in support of the principles of best evidence.'*

8.19 CCTV footage obtained by my investigators evidences a crowd on 13th June congregated in the front of the gates at Belfast City Hall. There is a low level of policing presence. A number of officers are circulating on foot throughout the crowd and speaking to individuals.

8.20 The crowd were standing in groups in a casual manner. Police radio transmissions from the event record three hundred individuals being present at this event. This number concurs with my assessment of CCTV footage.

Post Event Police Investigation

8.21 On 18th June 2020 a police Constable was appointed to investigate possible breaches of Regulations at the Belfast City Hall on 13th June 2020. This police investigation sought to identify organisers of the gathering. The investigation was subsequently closed with no further action taken by police. As a result of information obtained during the course of my investigation, a related misconduct investigation has commenced.

Absence of Enforcement Action

8.22 My investigation has established that no enforcement action was taken in respect of the crowd at the Belfast City Hall on 13th June 2020. This policing approach to enforcement of the Regulations significantly departed from the approach of 6th June 2020 at 'Black Lives Matter' protests. PSNI have clarified to the Police Ombudsman the reasons for the different approach. Namely, that lessons had been learned on 6th June that FPN's and CRN's were not effective for policing large gatherings.

8.23 It is evident that police moved swiftly to enforcement on 6th June at both 'Black Lives Matter' protests. In contrast, on 13th June there was no evidence of imminent enforcement action.

8.24 Police officers did not have authority to take enforcement action without the approval of the Gold Commander on 13th June 2020. This differed from the strategy adopted on 6th June 2020 when supervisors 'on the ground' could authorise enforcement action.

8.25 The policing objective on 13th June 2020 was to encourage those present to remain in groups of ten in compliance with the Regulations. At the 'Black Lives Matter' protests the policing primary focus had been to confirm to protesters that they were participating in an illegal gathering and must disperse.

8.26 The Gold Commander for 13th June contemporaneously recorded her operational decision for not proceeding to enforcement as follows:

'Our overarching aim remains to keep people safe through an effective, proportionate and Human Rights based operation.'

Although this is primarily a public safety / public order Op officers will still have FPNs in respect of emergency health regulations. Approach ref Covid Regs will continue to focus primarily on the 3 Es with the capacity to move to enforcement if necessary.

Our approach will, in the first instance, focus on evidence gathering.

The potential for disorder this weekend is not reflective of the situation last weekend where, primarily, gatherings were in support of a single issue and common purpose.

Officers have been briefed re maximum use of body worn video. Our style and tone will be friendly and respectful and will seek to maintain social distancing. Officers should not "take the knee".'

8.27 The Gold Commander made a further assessment at 12:45pm on 13th June, following discussions with the Silver Commander:

'To move to an enforcement role will increase the number of police officers deployed – this will substantially change the crowd dynamics and will most likely lead to increased tension. My priority, to achieve the overarching objective for this operation, must be framed within the ECHR and my

responsibilities under Section 32 police act. I believe a change in policing stance will increase the likelihood of police use of force and cause disruption to the road network. I am very conscious that this is the first week of trading for Belfast City Centre.

I am satisfied that the evidence gathering approach is the most proportionate tactic to address the operation at this time.'

8.28 The rationale is outlined as follows:

'I am very mindful of the policing approach to last weekend's event and the fact that if CRNs or FPNs are not issued to the crowd at the City Hall the organisers and participants of last weekend Anti-Racism event may feel that they have been unfairly treated.

I cannot allow this to be a determining factor for why I would move to the issue of CRNs or tickets today. I am also mindful that the issuing of tickets did not achieve dispersal of the crowd last week.

This is a different situation and a different dynamic. It is a more complex picture given the fact that I have information to suggest there are likely to be multiple sites of protest with different groups representing different causes. I cannot deliver a consistent approach to the policing operation today across so many potential areas unless it is through evidence gathering.

I have a responsibility to protect officers and the public and with the due consideration for the economic situation. Police have issued warning in line with the three Es and it seems to be successful in dispersing the crowd.'

- 8.29 I am of the view that the rationale for the decision making on 13th June demonstrates learning from the 6th June protests. There is explicit recognition by the Gold Commander on 13th June that enforcement was not an effective means of achieving crowd dispersal at large gatherings. This contributed to the tactic that no 'on the spot' enforcement action be taken on 13th June 2020.
- 8.30 The Gold Commander stated that the three 'E's' (Engage, Explain and Encourage) had been successful in dispersing the crowd on 13th June. However CCTV evidence does not support this position as 'Protect Our Monuments' protesters were present for a number of hours at the City Hall. It is my assessment that these demonstrators began to leave the venue when they were satisfied that no 'Black Lives Matter' event was to occur.
- 8.31 The Gold Commander's reason for adopting the evidence gathering approach was to prevent public disorder and disruption on 13th June. An evidence gathering approach was justified at the time however it was predicated on post event enforcement action where necessary. No follow-up enforcement action took place.
- 8.32 A need to ensure consistency across multiple protests was identified by the Gold Commander in her decision log, and in her account to Ombudsman investigators. The operational decision was a matter for the Gold Commander in the exercise of her role.
- 8.33 There was a marked difference in the presentation of the crowd at Belfast City Hall on 13th June 2020 in comparison to those who participated in protests on 6th June 2020. Protesters at the 'Black Lives Matter' events were open and transparent about their participation in the protests. By contrast, those who congregated at Belfast City Hall on 13th June did so in groups of ten or less. Demonstrators did not concede they were present for a 'common purpose'. On 13th June attendees were not forthright in answering questions which presented difficulties for police in establishing they were gathered for a 'common purpose'.

Police were presented with a different community presence on 6th and 13th June.

- 8.34 Proving that attendees were present for a ‘common purpose’ is not referenced in the Gold Commander’s rationale. An examination of all other evidence supports the view that it was an influential factor in how the event on 13th June was policed.

A Common Purpose

- 8.35 Evidence obtained from the PSNI and video footage indicates that the groups outside Belfast City Hall on 13th June 2020 included some individuals from the Loyalist community and Military Veterans. Police circulating in the crowd overheard protesters state they were there to ‘make a statement’ and to protect the monuments at the City Hall. Based on available evidence and information it is my assessment that those present were there for a ‘common purpose’.

Section 9: Conclusions and Recommendations

Human Rights and the Policing of the Protests

- 9.0 The 'Black Lives Matter' protest at Belfast City Hall on 3rd June 2020 was attended by about 2000 people. These numbers illustrate the depth of public feeling about racial equality. This presented police with an opportunity to plan for the protests at Belfast and Derry/Londonderry on 6th June 2020 and any subsequent protests during the public health emergency.
- 9.1 The PSNI strategy that was developed, referenced human rights. This included the right to freedom of expression and the right to freedom of peaceful assembly and association with others. These rights are enshrined in Articles 10 and 11 of the Convention and given further effect in domestic legislation by the Human Rights Act 1998. Section 6 of the Human Rights Act 1998 provides that it is unlawful for a public authority to act in a way that is incompatible with a Convention Right. Attendees at the 'Black Lives Matter' protests on 6th June 2020 were exercising these rights.
- 9.2 Articles 10 and 11 are qualified rights; interference with which is permissible where prescribed by law, where it is necessary, legitimate and proportionate to do so. PSNI contend that the Coronavirus public health crisis and related Regulations provided appropriate grounds for such interference. Any intention to interfere with human rights requires a careful balancing exercise of the competing Convention rights. My investigation found no documentary evidence to support the PSNI contention that in planning for the 'Black Lives Matter' protests on 6th June 2020 police balanced human rights with the public health considerations and requirements of the Regulations.
- 9.3 References in police strategy documents to Convention rights, is insufficient in these circumstances. The jurisprudential requirement is that the protection of rights is practical and effective and any interference must be necessary and

proportionate. Mere references to human rights do no more than pay lip service to the rights at stake.

9.4 It is my view that the overriding police objective for the 6th June 2020 'Black Lives Matter' protests was to have the events cancelled rather than ensuring the protests were policed proportionately. This is clearly reflected in the Criminal Justice Strategy, and early interventions with organisers; some of whom decided to cancel events outside Belfast and Derry/Londonderry. Failure to record the reasoning for PSNI's approach and subsequent interference with protester's rights on 6th June 2020 has had the effect that there is no evidence of its having balanced relevant human rights considerations. As a result of this failing there is no transparency around the decision making process.

9.5 In undertaking planning for these events police failed to have regard to the following matters:

- (i) The international and domestic context of 'Black Lives Matter'. Namely, the public response to police use of lethal force against George Floyd and other members of the black community in the USA and wider concerns of racial inequality.
- (ii) Constructive engagement with the Black, Asian and Minority Ethnic Communities prior to the protests on 6th June.
- (iii) The diverse nature of those who were likely to attend the 'Black Lives Matter' protests on 6th June 2020.

9.6 In comparison to those attending the 'Black Lives Matter' protests, police correctly anticipated that the individuals attending the 'Protect Our Monuments' event at Belfast City Hall would be predominantly, if not exclusively, from the 'Protestant, Unionist Loyalist' Community.

9.7 In contrast to 6th June 2020, the Gold Commander considerations for the 'Protect our Monuments' protest evidenced greater regard for the protester's Convention rights. It is my view that the policing approach on the day, was to encourage the protest to proceed in a COVID compliant manner, as opposed to seeking cancellation of the event. This approach was, however, inconsistent with the Criminal Justice Strategy which stated that engagement with organisers should focus on efforts to cancel the protest.

9.8 PSNI contend that its approach to the protests on 6th June 2020 was to ensure they were held in a manner consistent with the Regulations rather than cancellation of the protests. However, it is my view that for the following reasons the available evidence does not support that position:

- (i) PSNI's Criminal Justice Strategy was aimed at achieving cancellation of the events.
- (ii) PSNI Gold Strategy for 6th June 2020 identified the 'preferred outcome' that events 'do not take place'
- (iii) PSNI's engagement with the organisers was aimed at persuading the organisers to cancel the protests. This included warning of possible prosecution under Section 44 of the Serious Crime Act 2007.
- (iv) PSNI messaging on social media sought to dissuade protesters from attending and warned of enforcement action.
- (v) On 6th June 2020 police engaged with individuals at transportation hubs and at the protest venues with a view to discouraging attendance.
- (vi) PSNI failed to recognise and consider the proposals of the organisers regarding health and safety measures and adherence to public health guidance.

RECOMMENDATION 1: I recommend that the PSNI consider adopting a Human Rights Based Approach to policing of protests based on the four principles; Participation, Empowerment, Equality and Non-Discrimination and Accountability.

RECOMMENDATION 2: I recommend that underpinning this approach to protests, the PSNI develop human rights based assessments evidencing the identification of relevant rights, balancing competing rights and risks to include appropriate measures to address PSNI's obligations and mitigate the identified risks.

Inconsistent Policing of the Protests

9.9 PSNI contend that its policing of the 'Protect Our Monuments' was different from, rather than inconsistent with, the previous weekend's 'Black Lives Matter' protests. PSNI point to a different operational context which included a range of proposed protests, commercial re-opening of Belfast City Centre, substantive legislative change and a general trajectory of easing in the 'lockdown' restrictions.

9.10 PSNI's planning reflects that it had set out to police all anticipated protests for the weekend of 12th – 14th June in a consistent manner. This included policing a possible further 'Black Lives Matter' event on 13th June (which did not take place). This was PSNI's rationale for restricting authorisation for enforcement of the Regulations to the Gold Commander.

9.11 However, it is my view that policing of the event on 13th June was inconsistent with that on 6th June for the following reasons:

- (i) Police encouraged the 300 attendees at the 'Protect Our Monuments' protest to gather in a COVID compliant manner in groups of no more than ten. On 6th June the policing strategy and tactics was aimed at ensuring the protest was limited to six people in total.
- (ii) In contrast to 'Black Lives Matter' protests on 6th June 2020, there was no 'on the spot' enforcement of the Regulations at the 'Protect Our Monuments' event on 13th June 2020.

- (iii) Post-event enforcement has been taken by police in respect of the protest on 6th June whereas no equivalent action has been taken in respect of the 13th June. This matter is currently subject of a separate investigation by my Office.
- (iv) Only those persons who are alleged to have organised the 'Black Lives Matter' protests on 6th June were the subject of police 'follow-up' investigations and reports to the Director of Public Prosecutions. It is notable that the statute barred date for any enforcement of the Regulations in respect of the 'Protect Our Monuments' event on 13th June 2020 has now passed.
- (v) No BWV footage was captured on 13th June in respect of police interactions with attendees. Whereas on 6th June BWV was deployed extensively to capture both enforcement and general engagement.
- (vi) PSNI's Gold Commander decision for policing on 13th June included consideration of the potential for 'on the spot' enforcement to cause public disorder. No such consideration was evident on 6th June.

Amendments to the Regulations

- 9.12 One of the public concerns was whether the PSNI had been instrumental in seeking amendments to the Regulations on 5th June 2020. The concern was that the amendment was sought in order that PSNI would be able to take enforcement action at 'Black Lives Matter' protests on 6th June 2020.
- 9.13 My investigation has established that the PSNI did not make representations or have any other role in the circumstances leading to the legislative amendments that made breaches of Regulation 6A (of the Coronavirus Regulations) enforceable under Regulation 7 and made breaches of 6A a specific offence under Regulation 8.

Enforcement

9.14 Police officers were entitled to issue FPNs on the following grounds:

- (i) Contravention of Regulation 8(1), which can relate to a breach of seven different Regulations. In the case of the 'Black Lives Matter' protests this is likely to have related to leaving home without a reasonable excuse, contrary to Regulation 5 or breaching restrictions on gatherings, contrary to either Regulations 6 or 6A.
- (ii) Contravention of Regulation 8(2), relating to obstruction of any person carrying out a function under the Regulations.
- (iii) Contravention of Regulation 8(3), relating to breach of a direction, or failure to comply with a reasonable instruction or prohibition notice.

9.15 Regulation 9(4)(a) required that FPNs must *'give reasonably detailed particulars of the circumstances alleged to constitute the offence'*.

9.16 A number of FPNs issued at the Guildhall Square and Custom House Square have now been paid by the recipients. My investigation has established that many of these FPNs contain inconsistencies and errors and therefore their validity is questionable.

9.17 Shortly after 6th June 2020 an opportunity was presented to the PSNI to reflect on the issuing of these FPNs. I accept that there is no mechanism in the Regulations to rescind FPNs. However police had a discretion whether or not to process these FPNs to the Court Office, which they have not exercised.

9.18 Persons suspected of having organised the 'Black Lives Matter' protests on 3rd and 6th June 2020, have been subject to investigation under Section 44 of the Serious Crime Act 2007. In my view, the use of this legislation, which is directed at serious crime, is entirely disproportionate in the context of a summary only

offence. Police files have, however, been forwarded to the Director of Public Prosecutions for consideration as to prosecution.

RECOMMENDATION 3: Consistent with a similar recommendation by the Northern Ireland Policing Board, I recommend the PSNI review the enforcement Notices issued on 6th June 2020, acknowledge errors and commit to redress for those individuals affected.

Engagement

- 9.19 PSNI did not exploit opportunities to constructively engage with the Black, Asian and Minority Ethnic Communities involved with 'Black Lives Matter' protests either before or immediately after 3rd June 2020. This exposed an historic gap in strategic relationships with these communities. The police tactic of warning the organiser of the Guildhall Square event planned for 6th June 2020 of potential prosecution under Section 44 of the Serious Crime Act 2007 further inhibited the opportunity for engagement with these communities.
- 9.20 Following the 'Black Lives Matter' protests on 6th June 2020 police engaged with members of some Black, Asian and Minority Ethnic Communities. Policing of the protests made establishing meaningful engagement with these communities more challenging.
- 9.21 The differences in policing of the Regulations on 6th June and 13th June 2020 have given rise to public concerns of discrimination and unfair treatment.
- 9.22 Direct discrimination is a difference in treatment of a person or a particular group of people based on race, gender or other relevant protected characteristics. Indirect discrimination is differential treatment, including by association, disadvantageous to a person or people with a protected characteristic arising from the application of a criterion, provision or of a policy. Without good reason, even if they do not individually possess that protected characteristic.

- 9.23 I am not empowered to make a determination in respect of the conduct of any police officer when considering the application of a PSNI policy or practice under Section 60A of the 1998 Act. It will be a matter for the courts and/or appropriate tribunal if required to reach a conclusion as to whether the treatment of individuals at the 'Black Lives Matters' Protests on 6th June 2020 amounted to discrimination in fact.
- 9.24 The differential treatment by PSNI of protesters on 6th June when compared with those attending 'Protect Our Monuments' on 13th gave rise to claims of unfairness and discrimination against those persons who organised and attended the 'Black Lives Matters' protests. These concerns are in my view cogent, have substance and are justified in the circumstances. I believe that this unfairness was not intentional. Neither was it based on race or ethnicity of those who attended the event. Rather PSNI failed to balance Human Rights with the public health considerations and requirements of the Regulations.
- 9.25 Confidence in policing of some within the Black, Asian and Minority Ethnic Communities of Northern Ireland has been severely damaged by the PSNI's policing of the 'Black Lives Matter' protests.

RECOMMENDATION 4: I recommend the Chief Constable periodically reports to the Northern Ireland Policing Board on progress in his public commitment to commissioning strategic engagement with the Black, Asian and Minority Ethnic Communities of Northern Ireland.

- 9.26 I have concluded that police failed to undertake a human rights assessment of all factors associated with 'Black Lives Matters' protests on 6th June 2020, including recognition of the potential interference with Articles 10 and 11 of the Convention in the context of the public health crisis and the Regulations, as the core of their strategic planning for those events.

- 9.27 It is my view that historic PSNI passivity in establishing strategic relationships with Black, Asian and Minority Ethnic groups in Northern Ireland manifested itself in an inability to engage effectively with sections of those communities at a time of crisis immediately before and after the 'Black Lives Matter' protests on 6th June 2020. However, I commend the commitment of the Chief Constable to addressing this issue.
- 9.28 In making these strategic recommendations, it is my intention to highlight the lessons learned from the policing of the events on 6th June and to support the Chief Constable and his Senior Team in achieving their objectives in this regard.

The Regulations

Regulation 5 – Restrictions on Movement

As at 6th June 2020:

Movement was restricted without reasonable excuse.

At this time, reasonable excuses set out in the regulations included: to obtain basic necessities from shops and businesses set out in Part Three of Schedule 2; to take exercise; to seek medical assistance; to provide care or assistances; to donate blood; to travel for purposes of work; to attend a funeral of a member of your household, a close family member or a friend (where they have no family attending); to visit a graveyard; to fulfil a legal obligation; to access critical public services such as childcare, social care etc.; to see your children where they do not live with one or more parents; to move house; to avoid injury or illness or escape risk of harm; to attend a place of worship to take part in an outdoor activity; to take part in an outdoor gathering in accordance with 6A; to attend an outdoor film or concert.

As at 13th June 2020:

The above was still in force with additional 'reasonable excuses' for movement being added to the regulations: to attend to the care of animals; to participate in an outdoor marriage ceremony in accordance with Regulation 4(6)(g)/6B; for a person living alone to visit one other household.

Regulation 6 – Restrictions on Gatherings

As at 6th June 2020:

At this time, (subject to Regulation 6A) no gatherings could occur in a public place with two or more people except where all persons were of the same household; the gathering was for work purposes; to attend a funeral, a wedding in certain circumstances, or a place of worship; or where necessary to facilitate a house move, provide care and assistance, emergency assistance, to participate in legal proceedings or attend an outdoor film or concert.

As at 13th June 2020:

Again as above, subject to Regulations 6A and 6B, and with the addition of availing of or providing childcare.

Regulation 6A – Restrictions on Outdoor Gatherings

As of 6th June 2020:

An outdoor gathering could take place of up to six people who are not members of the same household.

As of 13th June 2020:

An outdoor gathering could take place of up to ten people who are not members of the same household.

Regulation 7 – Enforcement of Requirement**As at 6th June 2020:**

At this time, a 'relevant person' could take action as necessary to enforce the requirements imports by Regulations 3, 4, 6 and 6A/B.

Those in contravention of Regulations 3 or 4 could be given a Prohibition Notice.

Where necessary and proportionate to do so, those in contravention of Regulation 5 can either be directed to return home or can be removed to their home using reasonable force if necessary.

Those in contravention of Regulations 6 or 6A/B could be directed to disperse the gathering, and anyone in the gathering could be directed to return to their home and/or a relevant person could remove any person from the gathering to their home. The use of force could be used where necessary and proportionate to remove someone to their home.

As at 13th June 2020

At this time, the enforcement powers were as above, with the difference being gatherings on eleven or more contravened Regulation 6A, rather than the seven or more on the 6th June 2020.

Regulation 8 – Offences and Penalties**As at 6th June 2020:**

Those in contravention of Regulations 3, 4, 5, 6, 6A, 6B or 7 were deemed to have committed an offence.

An offence under the Regulations could be punishable on summary conviction to a fine.

Additionally, an authorised person may issue a Fixed Penalty Notice, under Regulation 9, to anyone who they reasonably believe to have committed an offence under Regulation 8, and who was aged 18 or over.

As at 13th June 2020:

At this time, the offences and penalties were as above.

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These publications and other information about the work of the Police Ombudsman for Northern Ireland are also available on the Internet at:

Website: www.policeombudsman.org