



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

**Policing Architecture: Development of a
Protocol**

19 April 2012

NORTHERN IRELAND ASSEMBLY

Committee for Justice

Policing Architecture: Development of a Protocol

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Seán Lynch
Mr Alban Maginness
Ms Jennifer McCann

Witnesses:

Mr David Hughes	Department of Justice
Mr Edgar Jardine	Northern Ireland Policing Board
Superintendent John McCaughan	Police Service of Northern Ireland

The Chairperson: I welcome David Hughes, the deputy director of policing policy in the Department of Justice (DOJ). You are also joined by Edgar Jardine, interim chief executive of the Northern Ireland Policing Board, and John McCaughan, a superintendent in the Police Service. I welcome you to the meeting. This session will be recorded by Hansard. I will hand over to you at this stage, Mr Hughes.

Mr David Hughes (Department of Justice): Thank you very much. I am grateful for the opportunity to bring the draft protocol back to the Committee this afternoon. The Committee has the draft protocol and a covering note that explains the origins and development of the document. The original intention behind the protocol was to provide a degree of clarity about the respective roles and responsibilities in what is an unusual governance and accountability framework. Fundamentally, it reflects the fact that the PSNI is not like other publicly funded organisations in the way in which it is held accountable. That is, in part, a consequence of the tripartite pattern of police governance that is common in UK jurisdictions: the Department, the Policing Board, which is known as a police authority elsewhere; and the Police Service or constabulary itself. It is also consistent with a couple of issues that are at the very core of the Patten recommendations, which were made over a decade ago, namely the explicit distancing of ministerial authority from policing and the securing of police accountability through the board. In addition, it was felt to be important that the protocol should reflect the role of the Committee for Justice, which is distinctive in Northern Ireland and is not directly referenced in the description of the governance arrangements in the Patten report. So, given the particular features of the governance and accountability architecture here, there remains a clear sense that some supporting document would help to avoid confusion. The Committee will also be aware that the accountability and oversight landscape in respect of policing is already quite well filled. Avoiding duplication, therefore, has real value.

I would underline that a protocol of this sort has never been a requirement. There is no legislative basis for it. It is, I suppose, an administrative tool. The prime mover in the process that has led to the drafting of the protocol was the board, prior to devolution, with the clear intention that its role should be made explicit and clarified, and thereby safeguarded, in the event of devolution of justice. I am conscious that, as the protocol has been developed, the practical outworking of the relationship between the four organisations has continued and has already developed. It may be that there is less need now to achieve clarity because we may all feel that we are actually quite used to the arrangements. However, it is still the case that a shared and agreed sense of what the arrangements are intended to be and how they are intended to work would be useful.

Of course, the protocol fits in a wider strategic framework for policing. It sits alongside the governing legislation, primarily the Police (Northern Ireland) Act 2000. The protocol itself cites a number of statutory provisions. Those citations do not cover the whole legislative basis for the governance of the police. If we set the Northern Ireland Act 1998, which defines the role of the Assembly and its Committees, alongside the Police Act, the statute alone might be felt to pull in different directions, leave aspects of the relationship ambiguous or create duplication. That is the special value of a protocol; it glosses the legislation to describe an arrangement that is more nuanced and that is conducted in a way that is agreed on all sides.

The protocol also sits alongside the management statement and financial memorandum of the Police Service and the management statement and financial memorandum of the board, which govern their relationships with the Department, as is required by the Department of Finance and Personnel (DFP) as a matter of corporate governance. Those documents are, basically, administrative in nature. The protocol may be said to be somewhat more strategic and high level than them. Of course, there is also the architecture at local level; the new policing and community safety partnerships (PCSPs) as contained in the Justice Act (Northern Ireland) 2011. As well as what might be described as that "static" framework, there is also a directional strategic framework, which is contained in the policing plan and the Minister's long-term objectives for policing.

As the covering paper set out, the preparation of the protocol has been somewhat circuitous, with the intention that the text should be acceptable to the Department, the board and the PSNI before being brought to the Committee. That agreement has now been secured. Both the Chief Constable and the Policing Board have signed up to the present text, which is in front of you. It is drafted to be agreed between the Minister and the Committee on behalf of the Assembly as a whole. Today, I hope that we can provide whatever explanations and assurances are necessary to enable the Committee to agree that the Chair should sign the protocol on the Committee's behalf. I am joined by colleagues from the Police Service and the Policing Board, who will answer any questions on their perspectives on the document.

Another key value of a protocol of this sort is that it can continue to be developed. In fact, I expect that, over time, additional aspects of the relationships between the four relevant authorities will need to be examined and set out in the protocol to ensure a shared understanding. Of course, it is much easier to alter a protocol than to change legislation. It may even be of value to review it regularly to ensure that it is still felt to be appropriate. The Committee may feel that there are aspects of the relationship between the four parties that might be added to or developed in the protocol. If that is the case, I suggest that it would be possible to agree the text as it stands, with an agreement that it might be expanded further as the next step.

The Department commends the draft protocol to the Committee, recognising that it is not the final word on the relationship between the Police Service, the board, the Department and the Committee but a useful tool to secure an agreed understanding of the interrelationship of those authorities.

The Chairperson: Thank you, Mr Hughes. I have a couple of questions. This was first raised back in June 2010. Why has it taken a year and a half to make what are pretty minimal changes that give some recognition of the Justice Committee? The question that leads on from that is this: what has happened that the Policing Board feels necessitates this protocol? Has the Justice Committee done something that the Policing Board feels has intruded on its remit?

Mr Hughes: As with all processes, I can see how it could have been done more quickly. However, it has been a case of redrafting the protocol, circulating it among three parties, looking at the redrafts, finding new things that needed to be addressed and then circulating it again. It has taken some time to do that. I acknowledge that that is the case.

Let me underline that the idea to have the protocol emerged from the Policing Board some years ago, before there was a Justice Committee or a Department of Justice. I do not think that there has been any point at which anyone has raised the necessity of the protocol since then because of any particular event or activity making it necessary or bringing it to the fore. That is just to explain where it came from.

Mr Edgar Jardine (Northern Ireland Policing Board): Perhaps I could come in on that, Chair. The procedures also cover two boards. The previous Policing Board packed up in May, and the new board came in three or four weeks later. Effectively, there was a new board, with just three people from the original board remaining. There was a learning curve for new members. I suppose the reason why it has taken so long is a reflection of the fact that there have not been any major issues to prompt it. It is recognised that the police work in a very regulated environment. It is a fairly crowded landscape, when you take the statutory bodies and non-governmental organisations that have an interest in it. Clearly, there are overlapping statutory responsibilities between the Police Act and the responsibilities of this Committee. Therefore, it seemed appropriate that we would try to be explicit about that, to identify the roles and responsibilities and try to rationalise that landscape as far as is possible.

Mr McCartney: This is a point of clarification. In paragraph 2.2 of your briefing paper, reference is made to governance arrangements for the PSNI being set out in a management statement and financial memorandum, in line with the DFP. Who are those management statements with?

Mr Hughes: The management statement and financial memorandum are signed by the departmental accounting officer and the accounting officer of the PSNI, the Chief Constable. There is also a similar management statement for the Policing Board. There will be one for every arm's-length body.

Mr McCartney: Is that a document that this Committee should be furnished with?

Mr Hughes: I must admit that the new PSNI document is not yet absolutely finalised. There is an existing document, which has been in place for some time, and the new one has been developed over the past number of months. It is not finalised. However, it is a matter of record and part of the normal governance arrangements for the arm's-length bodies.

Mr McCartney: Will we get a copy of it? Is it an arrangement between the board and the accounting officer, or is it an open, public document?

Mr Hughes: As far as I am aware, it is a public document.

Mr Jardine: It is a fairly standard document, which all arm's-length bodies have. In addition to the agreement between the board and the Department, all management statement and financial memorandums (MSFMs) are approved by DFP. It would have responsibility for the matter.

Mr McCartney: Can we have copies?

Mr Hughes: Yes, I am sure, but I reiterate that the current one is quite old. There has been a process since devolution to get them all reviewed, and one should be just about finalised. Probably the most sensible thing to do is to commit to providing the new finalised one.

Mr McCartney: That is fine. I just want to know what we are signing up to.

Mr Hughes: Yes. It would make sense of how that fits with the protocol and how the two join together.

The Chairperson: Is the protocol a legally binding document?

Mr Hughes: No. It is to be a useful reference point. It does not have any legal basis.

The Chairperson: There has not been any incident in which the Policing Board has felt that the Justice Committee has somehow impinged on its responsibility. I am not aware of the police having raised any issue about the Justice Committee raising any issue with them; the Chief Constable certainly did not do so at his recent appearance before the Committee. There is no statutory remit to underpin it, so what is the point? Committee members are acting responsibly, and we have a level of intelligence, I hope, that ensures that duplication is not taking place. We have parties on this Committee as we do on the Policing Board. I am sure that we talk to our colleagues on that to make sure that there is not unnecessary repetition. Why do we need a protocol?

Mr Hughes: Basically, it allows for an agreed position so that everyone who has read it agrees on the situation, the arrangements and the clarity. It may well be that, at this stage, the contents appear obvious, but part of that is the fact that it has been under development; it has been discussed and drafted. Therefore, the Department, the Police Service and the board have been well engaged in it. Of course, the previous Justice Committee was also engaged when it came in an earlier draft. The process of developing it has been a valuable exercise in getting to the point where we all recognise it and ask whether there is any big deal.

Arguably, we do not know whether something round the corner will come up and we will want to refer back to the protocols. We all agreed that this is the way that it should be.

The Chairperson: So, arguably, the Policing Board could get a bit precious about its position and attempt to gag the Justice Committee?

Mr Hughes: I will not speculate on a particular set of circumstances, but any one of the four organisations could risk becoming a bit precious about sensitivities in its area. I do not know.

The Chairperson: Does the Department want this? You said during your initial discussion that the Policing Board is the main driver behind it.

Mr Hughes: I said that the Policing Board was the instigator of the development of it. The Department recognises the value of having something that clarifies the relationships. It is an unusual governance and accountability framework, not least for those outside it who are not familiar with it. It is actually very useful to have a document like this to explain how it works.

The Chairperson: Useful for who? Politicians or officials?

Mr Hughes: Whoever might find it useful. I will not say that one group might find it more useful than others.

Mr Jardine: It has been endorsed by the Policing Board. It has been through various iterations and has been signed off by the board. Political and independent members feel that it is an appropriate instrument to have.

The Chairperson: The Committee agreed, as a courtesy, to meet the chairman of the Policing Board prior to having the Chief Constable before us. It was not a request to seek permission. I do not recall us ever even getting a response. That was perhaps nine months ago. Maybe I am reading into things that some people are getting a little bit precious about something being their remit and that the Justice Committee should not be getting involved. The fact that I could not even get an acknowledgement of that request just to meet the chairman of the Policing Board makes me a little bit suspicious. Then I see a protocol, which, to be honest, I think will be used as an attempt to gag this Committee if it decides that it wants to look into a particular issue. When I have met the Chief Constable, I have told him that I am keen for this Committee to have him before it on occasion, and he has never expressed any reservations to me whatsoever about the Justice Committee getting involved. I think that members around this table are quite capable of deciding what is appropriate for us and what is appropriate for

the Policing Board. I do not see the need for a protocol to tell us that. I am seeing blank faces looking back at me.

Superintendent John McCaughan (Police Service of Northern Ireland): Obviously, I am here to speak on behalf of the Chief Constable. This document has not been prepared, drafted and produced to the Committee in the last three months as something new. The work on it began before devolution, effectively, and it was an attempt by the board initially, but also by all interested parties, to clarify the arrangements around, in particular, what is quite a unique set of accountability arrangements for an arm's-length body. The PSNI is obviously assured by the fact that we have an unambiguous document sitting in front of us that has it written down. As you say, in many ways it is a statement of the obvious, because there is existing legislation. However, the Chief Constable and the PSNI are very keen to both respect and support the role of the Policing Board in holding us to account, securing effective and efficient policing, and, indeed, broad community confidence and support for policing. The board has a very clear role in that and a very large body of work to support doing that.

When it started a few years ago, it was a useful document. It is not something that has been plucked out of the air because people are feeling precious or under threat by the work of the Justice Committee. You are quite right to say that the Chief Constable is more than willing to appear here when you feel that you need to speak to him about matters of policing, but he is also keen that that does not affect either his relationship or the important ongoing work with the board. We support the Department and the board in saying that it is just a simple document that clarifies everybody's understanding of those relationships. There is no attempt, certainly not from the PSNI's perspective, to suggest that there is a problem with the work of the Justice Committee or that we feel threatened. I do not think that that is the view of our colleagues. It is really just an administrative tool to simplify people's understanding of the current arrangements. I do not want you to believe that we feel under threat from the Justice Committee, and I do not imagine that anyone else here with me today does either.

The Chairperson: OK. Thank you very much. We appreciate your time.