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Committee for Justice

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Human Rights Standards and Criminal
Justice Agencies: Attorney General for
Northern Ireland

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Mr Larkin QC: That is right.

The Chairperson: There would obviously be a process to say, "Here is now my guidance; what do you think?"

Mr Larkin QC: That is right. As you said, Chairman, it is about adding names to the list; it does not add any guidance. That may be of assistance to members. The first piece of guidance that I want to produce for the PSNI would be simply to give them the benefit of the right-to-life guidance that already exists for the other criminal justice organisations that are included in section 8.

Mr Lynch: Thanks for coming to the meeting, Attorney General. I have read the Deputy Chief Constable's letter. She outlined the human rights framework and said that she thinks that is sufficient. I have not read the letter to the Chair. Where do you feel that you need to have your own oversight?

Mr Larkin QC: Let us take the guidance that has been produced on the protection of the right to life of employees of criminal justice organisations against the acts of third parties. At present, that is not contained in the code of ethics, nor could it be, but it can be provided in the guidance. For example, the powerful topic that you were discussing just now draws attention to issues of human trafficking. There is, of course, a convention, and members will know about that from their extensive consideration of that issue. That is not part of the 1998 Act or the European Convention on Human Rights, but is something to which specific guidance could be given by way of concrete illustration. Another factor is that the code of ethics is self-contained. It does not relate to the exchange with other organisations. A very important obligation is that all component parts of the criminal justice community are subject to the need to avoid delay, where it is possible to do so. One of the useful functions of the guidance will be to ensure that there is, as far as possible, seamless cooperation between the various criminal justice organisations to achieve goals that are common to all of them.

Mr Lynch: I understand your reasoning on other agencies such as the forensic science laboratory, which has no oversight. However, given that the police have fairly robust oversight in the context of human rights, it seems that you are assuming more power.

Mr Larkin QC: No, because the obligation on the police at present is under section 6 of the 1998 Act, which obliges all public authorities to act compatibly with the convention rights set out in schedule 1 of the Act. All the existing criminal justice bodies are subject to that, and the monitoring of the Police Service is confined to that. This brings into play other international instruments.

Mr McCartney: Have you met the PSNI or the Policing Board about this?

Mr Larkin QC: No. As I explained on the last occasion, I rely, as on previous occasions, upon the Committee to do that. Let me make it absolutely clear: when it comes to the actual construction of the guidance itself, there is always extensive consultation with the criminal justice agency that is involved. So, if the PSNI were added to the list, there would be no question but that any guidance would be discussed with it extensively, even in advance of it being brought to this Committee, for example.

Mr McCartney: The Committee now has weight put on the need for this. Would it be useful if you met the PSNI and these issues were possibly resolved, without us being left in judgement, so to speak?

Mr Larkin QC: It is quite proper for the Committee to be in judgement. You may, of course, say that I would say this, but my letter provides an answer to those points. You can see from the legislation itself that the existing obligation of the Police Service and Policing Board is to respect, and monitor with respect to, the Human Rights Act 1998. Section 8 relates to all relevant criminal justice standards, so it is a broader range of obligations.

It is capable of cutting two ways. The code of ethics applies to the individual to whom it is addressed. The important thing about the guidance is that it moves in two directions. It obliges both the organisation and the individual. Hence, to give one example, which I hope is helpful, the protection of the right to life of members is addressed as much to the management structures and the organisation corporately as it is to the individuals who have responsibilities one for another.

Mr McCartney: Once the guidance is issued, what role do you then have beyond that?

Mr Larkin QC: As you will have seen from the guidance made thus far, it contains provision for monitoring and early report by the organisation if it finds a problem with the way it is working. So far, no organisation to which guidance has been addressed has identified any problem with its operation.

The Chairperson: Who monitors the guidance?

Mr Larkin QC: I do, in association with the organisation itself. There will be a structured review after one year, and organisations are encouraged to draw it to our attention before then if they identify problems with it.

The Chairperson: Just to be absolutely clear, if we were to agree that this should be added to the list, ultimately you would still need this Committee to sign off on the guidance.

Mr Larkin QC: Absolutely.

The Chairperson: That is the way that you have handled all the other agencies: this Committee has had to approve it.

Mr Larkin QC: That is right. It is a double lock. This permits guidance to be considered effectively. It does not in itself produce guidance.

Mr Elliott: Thank you for the presentation. The Policing Board performance committee said that it was unnecessary and unhelpful. You went some way in your letter to explain why you think they should be included, but you did not address their two points that it was unnecessary and unhelpful.

Mr Larkin QC: I think that I have. Look at the letter closely: it draws attention to the nature of the obligation that is on the Policing Board, which is confined to the 1998 Act. The section 8 reach is larger. On the one hand, that could potentially be viewed a little bit alarmingly as bringing to bear a whole range of obligations. However, helpfully — at least, I hope helpfully — the Committee will have seen the guidance that has been produced thus far, which is practical in its nature and designed, as I said, to reassure competent and conscientious professionals in their particular criminal justice disciplines that they are acting safely and in a way that is consistent with the highest international human rights standards.

Mr Elliott: You refer a number of times to the 1998 Act. Are you suggesting that there is an onus for the police to be included in this under that Act?

Mr Larkin QC: No. The police are already, by section 6 of the 1998 Act, subject to the full range of obligations, for example the convention rights, under schedule 1. However, the point that Mr Elliott makes is an important one because it is clear that the grain of section 8 of the Justice (Northern Ireland) Act 2004 almost implies that the police should have guidance that is relevant to them, yet they cannot have guidance that is relevant to them unless the name of the organisation is added to the list. I say that because, when drawing up the code of ethics, the Chief Constable has to have regard to the content of any guidance. Yet, there cannot be guidance unless the PSNI is added to the list.

Mr Elliott: It is quite interesting, Attorney General. You use the words "almost implies". That is quite unlike you. You are usually quite definitive. It either does imply or it does not imply.

Mr Larkin QC: I answer your question by drawing attention to two bodies that I have consulted. The Advocate General for Northern Ireland, Her Majesty's Attorney General, supports the addition of the PSNI. The Police Federation, a body with practical experience, supports the addition of the PSNI to the section 8 list.

Mr Elliott: OK.

Finally, is there any other European legislation that may apply?

Mr Larkin QC: Not legislation —

Mr Elliott: Or directive, even.

Mr Larkin QC: There is a range of international human rights standards that apply, and some of those are referred to, for example, in the letter.

Mr A Maginness: Attorney General, you are very welcome. It is a useful conversation, but, at the end of the day, what we are struggling to gather is what added value there is from your proposition on the PSNI. The PSNI is subject to the Policing Board and the 1998 Act, individual officers subject to the code of ethics. There is a range of legislation that it must act in accordance with and in accordance with human rights standards, which have been well established under the jurisprudence of the European Court and so forth. What additional value is there in what you are suggesting?

Mr Larkin QC: Let me give an immediate practical example and set out a larger theoretical example. The practical example is very easily given: the extension to the PSNI of guidance that every other criminal justice organisation has the benefit of. That is the protection of its members against threats to their life and well-being from third parties. That is the kind of document that cannot be contained in a code of ethics. It is addressed to the organisation corporately to see that it discharges a range of international human rights obligations with respect to the health and well-being of its members.

Secondly, then, the question about the issue of principle. If you look at the 2002 criminal justice Act and the obligations that the Director of Public Prosecutions has, for example, in producing a code for prosecutors, you will see how that mirrors, to a very large extent, the obligation to produce a code of ethics. The point that you make in relation to the PSNI might very well be made, in one view, with respect to the Public Prosecution Service. In fact, the point to emphasise is the interlocking nature of all this and that section 8 guidance — I am not making a vulgar party political point here; it is simply to remind Mr Maginness — was an SDLP proposal in the House of Commons.

The Chairperson: That is you over the line. *[Laughter.]*

Mr Larkin QC: It is worthwhile to have that. The point has been made to me more than once by the Advocate General. It is complementary with the 1998 Act obligations, which are directly effective as a matter of domestic law. This brings to bear a much larger range of international human rights standards, which Parliament obviously thought were important to potentially bring to bear. They are not directly effective in the same way that section 6 is, as Mr Maginness knows, but the requirement is to take them into account.

So, at this stage, it is worthwhile bearing in mind the point that the Chairman has drawn out: this simply creates the potential for guidance to be produced. If, for example, having got to that step, the Committee then considers that any piece of guidance I might bring to it serves no useful purpose, I do not think that the Committee would be slow in telling me that.

Mr A Maginness: That is the nub of the problem. The Policing Board, the Police Service and those of us around this table struggle to see the added value.

Mr Larkin QC: It is very simple because there is the concrete instance of guidance that benefits every criminal justice organisation except the police. Although the police are, in many ways, on the front line in terms of risk to personnel, they do not obtain the benefit of the guidance. Secondly, the obligation on the police and the Policing Board is focused exclusively on the Human Rights Act. Section 8 scope is much broader. Thirdly, section 8 contemplates, I think, that guidance will be produced that is relevant to the police. The obligation on the Chief Constable to "have regard" to the content of any guidance when producing his code speaks to that. Of course, one asks this rhetorically but, I hope, with more than rhetorical effect: how can that be done unless the PSNI is added to the list? No guidance will be relevant to the Chief Constable's organisation unless that is done.

Mr A Maginness: Finally, you cited the examples of Forensic Science and the PPS, but are they not in a different position? The police are accountable to the Policing Board and so forth. Clearly, that puts the police in a different position from the PPS and Forensic Science.

Mr Larkin QC: No. It cuts both ways because it could be argued that, in many ways, one needs guidance less for an organisation that is subject to direct political accountability. The Northern Ireland Prison Service, for example, is tucked away within DOJ, and, therefore, if the Committee raises a concern, the Justice Minister is in a position to remedy that pretty swiftly and directly. The police, as we all know, have operational independence, and that is why there has been created a sophisticated

system of monitoring and control through the Policing Board, with the delicate composition that that body enjoys.

In section 8, you have the opportunity to provide guidance that goes further and complements the Human Rights Act, so it seems to me a natural step to take, particularly when section 8 plainly contemplates that guidance will be produced that is relevant to the operations of the police, which cannot happen unless the PSNI is added to the list. In that context, it is worth bearing in mind that the Advocate General and the Police Federation support that move.

The Chairperson: Far be it for me to want to advance an SDLP policy — *[Laughter.]* I know that, in a political sense, the Policing Board is often seen as a sacred cow, if I may call it that, but I just want to be very clear that this would in no way diminish the role of the Policing Board.

Mr Larkin QC: Not at all.

The Chairperson: The correspondence that I have read indicates to me that, without substantive reason, they are being particularly precious. I had a conversation with a colleague who chairs the performance committee that raised the objections in the first instance, and he is now reassured. I want to be very clear that this does not have one iota of impact on the Policing Board and its functions operating as they have done heretofore.

Mr Larkin QC: No. Mr Elliott jocosely suggested earlier that I was less than precise in one of my answers, which he said was uncharacteristic. Let me be absolutely unambiguous, Chair: your summary is entirely correct. This will not detract one jot from the important responsibilities of the Policing Board in relation to the Human Rights Act.

The Chairperson: OK. Thank you very much, Attorney General, for coming to the Committee. It is much appreciated.

Mr Larkin QC: I am very grateful, Chair.