

# **The Police Service of Northern Ireland**

**An inspection into the Police Service  
of Northern Ireland's handling of the  
Bobby Storey funeral on 30 June  
2020**

# Contents

<b>Introduction</b>	<b>1</b>
Background	1
The policing context in Northern Ireland	2
PSNI engagement with communities and organisers	3
Our commission	3
Methodology	4
<b>The legal context</b>	<b>5</b>
The law applicable in Northern Ireland between 28 March 2020 and 3 July 2020	5
The Regulations as originally made	6
Relevant amendments to the Regulations	8
Summary of applicable provisions concerning funerals as at 30 June 2020	15
Human rights legislation and case law	17
The Northern Ireland Policing Board review	19
The statement of the Attorney General in relation to the Regulations	21
<b>National police guidance on policing the pandemic and the 4Es approach</b>	<b>23</b>
The PSNI interpretation of the 4Es guidance	24
The PSNI guidance on policing funerals in the pandemic	25
Communications during the pandemic	26
<b>Mr Storey’s funeral</b>	<b>27</b>
PSNI engagement with funeral organisers	27
The PSNI planning document for Mr Storey’s funeral	29
The PSNI’s plans for Mr Storey’s funeral	29
The organisers’ plan	33
A timeline of events before the funeral	34
Reaction to the funeral	37
<b>Investigation into breaches of the Regulations</b>	<b>40</b>

The initial investigation	40
Decision to appoint an independent officer	42
The independent officer’s investigation	43
Consultation with the Public Prosecution Service (PPS)	46
The suspect interviews	48
File submission	49
<b>The PPS decisions on prosecution</b>	<b>50</b>
The PPS public statements	50
The Director of Public Prosecution’s explanation of the decision	51
The PPS decision in relation to the PSNI’s approach to engagement	51
The PPS decision in relation to the lack of clarity within the Regulations	54
The PPS decision in relation to the lessons to learn	55
Our assessment of the decision as explained in the PPS public statement	56
Reaction following the PPS decision	57
Northern Ireland Policing Board 2 April 2021	60
<b>Our review of other funeral cases investigated by the PSNI</b>	<b>63</b>
The PSNI investigations into three other funerals presented to the PPS	63
A review of funeral data	65
<b>Our conclusions</b>	<b>66</b>
Was the engagement and 4Es approach for Mr Storey’s funeral comparable with the approach in England and Wales?	67
Did the PSNI act in a way consistent with the approach taken for comparable events in Northern Ireland?	70
Were any special arrangements for Mr Storey’s funeral justified?	71
Conclusion	72
<b>Annex A – Learning</b>	<b>75</b>

# Introduction

## Background

Bobby Storey died in England on 21 June 2020. His funeral was held in Belfast on 30 June, during the first COVID-19 lockdown. Hundreds of mourners attended to pay their respects to a senior Sinn Féin member who was seen by many as an important figure in bringing hard-line Republicans round to the Northern Ireland peace process.

On behalf of those who worked on this report, we send our condolences to all those who have lost loved ones during the pandemic.

Funerals in Northern Ireland typically draw huge numbers of mourners, all wanting to pay their respects to the dead and to comfort family and friends. But, in a time of COVID-19, such gatherings have had to be restricted for the sake of public health.

Because of Mr Storey's prominence in the Republican community, and the crowds expected at his funeral, the Police Service of Northern Ireland (PSNI) and funeral organisers talked beforehand. The PSNI was initially concerned that some of the mourners might perform a Paramilitary-style show of strength. This would have significant political and community ramifications throughout Northern Ireland. The organisers later allayed these concerns in conversations with the PSNI.

The PSNI knew before the funeral that many people, including politicians, were taking a keen interest in the policing on the day. The service was concerned about a loss of support for the PSNI if action wasn't taken against any mourners who breached the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020.

Sinn Féin members, including its President and Members of the Northern Ireland Legislative Assembly (MLAs), attended Mr Storey's funeral. Large numbers of mourners lined the route and followed the cortège.

Immediately after the funeral, there was anger from the public and other politicians. They questioned the actions of MLAs, who appealed to the public to adhere to the Regulations during the pandemic and then appeared to have contravened the very rules they had helped set.

The PSNI responded to the criticism by opening an investigation into the potential breaches of the Regulations. Later, a senior investigator from a police force in England was appointed to provide independent oversight. This also made sure that there was no perceived conflict of interest in the PSNI effectively investigating members of the Northern Ireland Policing Board (NIPB), the independent body that is responsible for its oversight.

The PSNI consulted the Public Prosecution Service (PPS) for Northern Ireland to determine whether Regulations had been breached to the extent that prosecutions should be pursued.

In March 2021, the PPS announced that there would be no prosecutions associated with attendance at Mr Storey's funeral. This was because of concerns about the confusing Regulations and the way in which the PSNI had handled engagement prior to the funeral.

There was widespread condemnation of the decision not to prosecute, not all of it well informed. There were also calls for the Chief Constable to resign.

The NIPB scrutinised the PPS's statement, and questioned the actions and decisions of the PSNI. Soon after, the Minister of Justice for Northern Ireland commissioned us to undertake an inspection.

## **The policing context in Northern Ireland**

The PSNI operates in a complicated social and political environment. This makes it difficult for the service to build a positive relationship with some communities. The policing of all communities in Northern Ireland calls for sensitive relationship building, extensive local knowledge, and a deep understanding of people's values, traditions and perspectives.

Even if it will attract criticism to do so, the PSNI must sometimes prioritise maintaining public order and protecting people from violence over strict enforcement of the law. It serves a public that is highly alert to fairness and perceptions of disproportionality in policing the different communities. And many of its decisions are scrutinised by politicians, campaigners and community leaders – to an extent conspicuously more than police services in other parts of the UK.

Policing in the pandemic has thrust the PSNI into a new and unfamiliar role of policing public health. New legislation and guidance have been produced quickly, and public and press interest in police actions has been significant. The police response to the challenges they have encountered has, on occasions, been viewed by some as heavy-handed or inconsistent. We were told that the COVID-19 restrictions caused emotions in communities in Northern Ireland to run high, and funerals, in particular, have been difficult to police. The PSNI has developed guidance to help officers police funerals.

During our inspection, we found that officers and staff of the PSNI, who are members of all communities, recognise the sensitivity and strength of feeling around funerals. They have developed a strategy to police funerals proportionately and with minimum impact on communities.

Besides these long-standing sensitivities, the PSNI must now address complex COVID-19 Regulation breaches.

In this context, we found that the PSNI policy respects the bereaved family and allows them to lay their loved ones to rest with dignity.

## PSNI engagement with communities and organisers

Funerals have great significance in Northern Ireland. Moreover, it is not uncommon for the funeral of a prominent person to become an expression of political aspirations and identity. Historical events, like Paramilitary displays and funerals being subject to military or rival community activity, can have influence. In the past, some funerals became platforms for violent protests, creating a legacy associating high-profile funerals with the potential for disorder and violence.

To avert unrest, the PSNI seeks to engage with communities and funeral organisers. The service aims to reduce the risk of violence while facilitating a respectful and sensitive funeral, and associated events.

The PSNI told us the service had, over many years, worked to improve relationships with the communities and community leaders in Northern Ireland. Working together in this way can improve community cohesion and build confidence. Also, it has helped the PSNI to preserve order and prevent shows of paramilitary strength while allowing communities space to commemorate their dead.

### Our commission

On 2 April 2021, the Minister of Justice for Northern Ireland wrote to invite Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) to undertake the 2020/21 inspection of the PSNI, in line with the requirements of the Police (Northern Ireland) Act 1998. She wrote:

"I have received a request from the Northern Ireland Policing Board that this inspection should take the form of 'a thematic inspection into the PSNI's handling of the funeral of Mr Bobby Storey – its operational decision making, application of the law in the context of the COVID regulations, and review the PSNI's policy and procedures around police engagement with event organisers and others, and consistency of approach given the findings of the Public Prosecution Service (PPS) statement of 30 March 2021'.

Given this context, the inspection should:

- assess whether the approach taken by the PSNI to the events surrounding the funeral of Mr Bobby Storey was within the parameters of national policing standards, in the context of COVID-19 health protection regulations; and
- offer relevant learning to assist in policing of COVID restrictions through the 'four Es' approach in coming months.

As you are no doubt aware, there is a high level of public and political interest in the events in question. In the interests of maintaining public confidence in policing in Northern Ireland, therefore, I would ask you to complete the inspection by no later than 14 May."

## Methodology

We carried out this inspection quickly but with the thoroughness it merits.

We gathered a wide range of views and perspectives. The inspection team conducted more than 30 interviews. This included speaking to police officers at various levels of seniority, politicians, government officials, the PPS and other legal professionals.

With the co-operation of the PSNI and others, we gathered more than 500 documents, including statements, minutes of meetings, emails, police logs and legal submissions. We sifted them for relevance and selected items for review by our team of inspectors. We also viewed some footage collected by the evidence-gathering teams and others who were at the funeral.

We examined publicly available commentary on the funeral of Mr Storey and other funerals held in Northern Ireland. This included material on social media and news websites.

We are grateful to everyone who has co-operated. Their help has allowed this inspection to be completed in the time requested by the Minister of Justice.

# The legal context

The [Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#) were made on 28 March 2020 and came into effect that same day. We will refer to them as the “Regulations”.

The Regulations were put in place with the explicit objective of containing and suppressing the transmission of coronavirus. They were implemented at different points to:

- restrict travel or movement outdoors;
- limit the size and location of gatherings; and
- restrict access to (or even close) places of work, education and recreation.

The effect of the Regulations was to implement the first “lockdown” in Northern Ireland. By the time of Mr Storey’s funeral on 30 June 2020, the Regulations had been amended on nine occasions, most recently the previous day. They were subsequently amended again on 2 July and 9 July 2020. On 23 July 2020, the Regulations were revoked and replaced by [a new set of regulations](#).

To assess the Police Service of Northern Ireland (PSNI)’s policing of the funeral, we will explain the relevant provisions of the Regulations. We will assess the Regulations from the time they were first made and focus on the period leading up to and immediately after the funeral. The content, frequency and timing of the various amendments are relevant to the clarity and consistency of the law that the PSNI were required to enforce.

We will also consider the impact of:

- the Regulations on decisions made by the PSNI and the Public Prosecution Service (PPS) Northern Ireland in the subsequent investigation and case file; and
- human rights legislation, case law and national guidance to police as they relate to the events that we describe.

## **The law applicable in Northern Ireland between 28 March 2020 and 3 July 2020**

The overall structure of the Regulations remained the same throughout the period when they were in force, with provisions concerning (i) the closure of premises and businesses, (ii) restrictions on movement and gatherings, (iii) police enforcement powers, and (iv) offences and penalties.

The various restrictions applied during the “emergency period”, which was defined in Regulation 2 as the period starting at the time that the Regulations came into

operation and ending on the day and at the time specified by the Department of Health.<sup>1</sup> Regulation 2 also provided that the Department of Health must review the need for restrictions and requirements imposed by the Regulations at least once every 21 days, and that, as soon as it considered any restriction or requirement unnecessary, it must publish a direction terminating that restriction or requirement.

## The Regulations as originally made

### Closure of premises and businesses

Regulation 3 provided a requirement to close premises and businesses during the emergency period.

Regulation 4 provided for further restrictions and closures during the emergency period. Regulation 4(5) provided that a person who was responsible for a place of worship must ensure that the place of worship was closed, except for the uses permitted in Regulation 4(6). Regulation 4(6) provided that a place of worship may be used, among other things, for funerals. Further, Regulation 4(8) provided that a person who was responsible for a crematorium or burial ground must ensure that it was closed to members of the public, except for funerals or burials.

### Restrictions on movement and gatherings

Regulation 5(1) provided that during the emergency period no person could leave the place where they were living without reasonable excuse.

Regulation 5(2) provided a list of 13 activities that were considered to provide a reasonable excuse for a person to leave the place where they were living. The wording of the provision made it clear that this list was non-exhaustive: “for the purposes of paragraph (1), a reasonable excuse **includes** the need [to carry out the specified activities]” (emphasis added). In other words, the list included, but was not limited to, the activities that were mentioned expressly.

One of the activities that was expressly permitted by Regulation 5 was “to attend a funeral of (i) a member of the person’s household, (ii) a close family member, or (iii) if no-one within sub-paragraphs (i) or (ii) is attending, a friend”: Regulation 5(2)(g).

In addition, Regulation 6 provided that no person could participate in a “gathering” in a public place of more than two people unless a specific exception applied. One of the exceptions was “to attend a funeral”: Regulation 6(c).

In summary, under the original Regulations, it was permissible to participate in a funeral (even when the funeral was a “gathering” of more than two people in a public place); but attending a funeral would only provide “a reasonable excuse” to leave home if the funeral was of a close family member, a member of one’s household, or (if none of the deceased’s family or household members were attending) a friend.

---

<sup>1</sup> Regulation 1 dealt with citation, commencement and definitions. It provided that the Regulations would come into force at 11.00pm on 28 March 2020.

## Police powers to enforce the Regulations

Regulation 7(1) provided that a “relevant person” (defined as including a constable) could take such action as was necessary to enforce any requirement imposed by Regulations 3, 4 or 6.

Regulation 7 went on to specify the following powers:

“(2) A relevant person may give a prohibition notice to a person if the relevant person reasonably believes that

(a) the person is contravening a requirement in regulation 3 or 4, and

(b) it is necessary and proportionate to give the prohibition notice for the purpose of preventing that person from continuing to contravene the requirement.

(3) Where a relevant person considers that a person is outside the place where they are living in contravention of regulation 5(1), the relevant person may—

(a) direct that person to return to the place where they are living, or

(b) remove that person to the place where they are living.

(4) A relevant person exercising the power in paragraph (3)(b) to remove a person to the place where they are living, may use reasonable force, if necessary, in the exercise of the power.

...

(8) A relevant person may only exercise the power in paragraph (3), (5) or (6) if the relevant person considers that it is a necessary and proportionate means of ensuring compliance with the requirement.

(9) Where a relevant person considers that three or more people are gathered together in contravention of regulation 6, the relevant person may—

(a) direct the gathering to disperse;

(b) direct any person in the gathering to return to the place where they are living;

(c) remove any person in the gathering to the place where they are living.

(10) Paragraphs (4), (5), (6) (7) and (8) apply to the exercise of a power under paragraph (9), as they apply to the exercise of a power under paragraph (3).

(11) A relevant person exercising a power under paragraph (3), (5), (6) or (9) may give the person concerned any reasonable instructions they consider to be necessary.”

## Offences and penalties under the Regulations

Regulation 8(1) provided for the following relevant offences:

“(1) 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.”

We note that Regulation 5 itself permitted a person to leave their home if there was a reasonable excuse, which appears to explain why Regulation 8(1) was structured in this way. The effect was that a person could claim a defence of reasonable excuse in relation to alleged breaches of both Regulation 5 (restrictions on movement) and Regulation 6 (restrictions on gatherings).

It was also an offence, without a reasonable excuse, to contravene a direction given under Regulation 7, or to fail to comply with a reasonable instruction or a prohibition notice given by a relevant person under Regulation 7: see Regulation 8(3).

A person who committed an offence under the Regulations could receive a fixed penalty notice<sup>2</sup> or a fine following conviction,<sup>3</sup> and could be arrested.<sup>4</sup> We later speak about the lack of clarity in the Regulations, particularly in light of the frequent amendments.

## Relevant amendments to the Regulations

The Regulations were amended on 11 separate occasions before being revoked on 23 July 2020. Each amendment took effect by way of a separate set of amendment Regulations, each of which was accompanied by an Explanatory Memorandum that gave an indication of the underlying policy intention behind the amendments. The relevant amendments are summarised below.

### The first amendment Regulations<sup>5</sup>

With effect from 11.00pm on 24 April 2020, the Regulations were amended so as to permit burial grounds to reopen, subject to social distancing requirements. In Regulation 4(8) (which said that a person who was responsible for a crematorium or burial ground must ensure that it was closed to members of the public, except for funerals or burials), the references to burial grounds and burials were removed. The effect was to remove the requirement to keep burial grounds closed (although crematoriums were still required to remain closed except for funerals). In Regulation 5(2), a new paragraph (ga) was added to the list of examples of reasonable excuses for leaving home, as follows: “to visit a burial ground to pay respects to a member of the person’s household, family member or friend”. Finally, a new Regulation 4A was inserted, which provided that during the emergency period a person who was responsible for a burial ground must take all reasonable measures to ensure that a distance of at least two metres was maintained between every person at the burial ground (except between members of the same household).

---

<sup>2</sup> Regulation 9.

<sup>3</sup> Regulation 8(4).

<sup>4</sup> Regulation 8(5).

<sup>5</sup> Health Protection (Coronavirus, Restrictions) (Amendment) Regulations (Northern Ireland) 2020, S.R. 2020 No. 71.

The Explanatory Memorandum stated (at paragraph 5.4):

“The amendment to the principal Regulations to allow burial grounds and cemeteries to open recognises that, particularly for those who are unable to attend funerals and those who derive great comfort from visiting the grave of a family member, there are compassionate grounds to allow them open (sic) if they are able to do so safely. This may be of particular importance to those who may have lost a loved one to coronavirus disease and have not been able to visit their relative in hospital.”

### **The second amendment Regulations<sup>6</sup>**

With effect from 11.00pm on 15 May 2020, the Regulations were amended so as (among other things) to permit marriages to take place in certain limited circumstances, defined in a new paragraph (6)(d) added to Regulation 4:

“A place of worship may be used ... (d) to solemnise a marriage ceremony where a party to the marriage is suffering from a progressive disease, where death in consequence of that disease can reasonably be expected within six months of the date of the ceremony and subject to a total number of ten persons being present in the place of worship at the time of the ceremony, including the marriage celebrant and the two parties to the marriage.”

The Regulation 6 restrictions on participating in gatherings were also amended to make clear that there was now an exception for attending a marriage ceremony in accordance with Regulation 4(6)(d). At this stage, the Regulation 5(2) list of examples of reasonable excuses for leaving home was not correspondingly amended but, as set out below, this was to be done by way of the third amendment Regulations.

The Explanatory Memorandum stated (at paragraph 5.4):

“For some couples delaying a marriage is not an option. This is most critical for those couples were (sic) one of the parties or a close family member is terminally ill and only has a very short period of life left. A marriage requires five people to be present: the parties to the marriage, two witnesses and registrar or officiant. Maximum attendance of ten people would make this consistent with funerals. Granting access to any public building might lead to some degree of risk, albeit this risk is considered to be relatively low, for participants and anyone working in the place of worship. However, there is a strong humanitarian argument, with significant well-being benefits for the individuals concerned, to allow such marriages to proceed.”

We note the reference to the maximum attendance of ten people being “consistent with funerals”. There was in fact no express maximum attendance at a funeral or a marriage ceremony under the Regulations at this time. It may be that the view was taken that only around ten people would be likely to have a reasonable excuse for leaving home to attend a particular funeral, given the wording of Regulation 5(2)(g) at that time. However, the ‘limit’ of ten persons was nowhere stipulated in the Regulations.

---

<sup>6</sup> Health Protection (Coronavirus, Restrictions) (Amendment No.2) Regulations (Northern Ireland) 2020, S.R. 2020 No. 82.

### The third amendment Regulations<sup>7</sup>

With effect from 11.00pm on 19 May 2020, the Regulations were amended so as to include the opening of places of worship for acts of private worship and the broadcast of services to people present in a vehicle parked on the premises, and to permit certain limited outdoor activities and outdoor gatherings.

In particular, a new Regulation 6A was inserted into the Regulations, which provided that during the emergency period “a person may participate in an outdoor gathering consisting of (i) up to six people who are not members of the same household, or (ii) any number of members of the same household”. Regulation 6 (restrictions on gatherings) was also amended to insert the words “Subject to regulation 6A, during the emergency period...”. The Explanatory Memorandum stated (at paragraph 5.6):

“Regulation 6 of the principal Regulations provides that no person may participate in a gathering in a public place of more than two people except in certain limited circumstances. Allowing groups of up to 6 people who do not share a household to meet outdoors whilst maintaining social distancing is consistent with Step 1 ‘Definition of steps’ in the Executive Approach to Decision Making and is considered to be low risk with clear benefits in terms of individual well-being and wider society.”

The amending Regulations also added to the Regulation 5(2) list of examples of reasonable excuses for leaving home, to include the following: “(n) to attend a place of worship for an act of private worship, or to attend an act of worship which is being broadcast or to attend or participate in a marriage ceremony, in accordance with regulation 4(6)(d)”, “(o) to take part in an outdoor activity”, and “(p) to take part in an outdoor gathering, in accordance with regulation 6A”.

Accordingly, from 11.00pm on 19 May 2020, it was lawful to participate in an outdoor gathering of any number of members of the same household or up to six people from different households. Participating in such a gathering would have been a reasonable excuse to leave home.

In contrast, it would not have been lawful to participate in an **indoor** gathering of more than two people unless one of the exceptions in Regulation 6 applied (which included “to attend a funeral” – albeit that these exceptions were now “subject to Regulation 6A” [i.e. the ‘rule of 6’ applied]).

### The fourth amendment Regulations<sup>8</sup>

With effect from 11.00pm on 21 May 2020, the Regulations were amended relating to drive-in cinema screenings and live entertainment events. There was no reference to funerals.

---

<sup>7</sup> Health Protection (Coronavirus, Restrictions) (Amendment No.3) Regulations (Northern Ireland) 2020, S.R. 2020 No. 84.

<sup>8</sup> Health Protection (Coronavirus, Restrictions) (Amendment No.4) Regulations (Northern Ireland) 2020, S.R. 2020 No. 86.

### **The fifth amendment Regulations<sup>9</sup>**

With effect from 11.00pm on 5 June 2020, the Regulations were amended relating to outdoor gatherings to celebrate a marriage or civil partnership ceremony. Again, there was no reference to funerals.

### **The sixth amendment Regulations<sup>10</sup>**

With effect from 11.00pm on 11 June 2020, the Regulations were amended so as to increase the maximum attendance at an outdoor gathering of people who were not members of the same household from six people to ten people. The Explanatory Memorandum stated (at paragraph 5.9):

“Regulation 6A permits up to six people who are not members of the same household to meet outdoors. Increasing the number of people from different households that can meet outdoors from 6 to 10 is consistent with Step 2 ‘Family and Community’ in the Executive Approach to Decision Making. This will offer benefits in terms of personal well-being at low risk, given that the participants will meet outdoors where social distancing can be more easily maintained.”

The same amending Regulations also added further activities to the Regulation 5(2) list of examples of reasonable excuses for leaving home, including to move house and undertake associated activities for that purpose, and, in the case of a person living alone, to visit or stay in another person’s private dwelling (the idea being to allow the formation of a support “bubble”).

### **The seventh amendment Regulations<sup>11</sup>**

With effect from 11.00pm on 22 June 2020, the Regulations were amended so as to add the following to the Regulation 5(2) list of examples of reasonable excuses for leaving home:

“(v) to visit another person’s private dwelling, either alone or accompanied by others, provided the maximum number of persons in the dwelling does not exceed 6”.

The Explanatory Memorandum stated (at paragraph 5.4):

“Regulation 5 of the principal Regulations (restrictions on movement) provides for a ‘reasonable excuse’ for a person leaving the place where they are living. Allowing people to meet indoors in a planned and limited way is consistent with Step 1 of Executive Approach to Decision-Making. Allowing groups of up to six people, not from the same household, to be able to meet indoors would promote family friendly arrangements and would also be of assistance in relation to informal childcare.”

---

<sup>9</sup> Health Protection (Coronavirus, Restrictions) (Amendment No.5) Regulations (Northern Ireland) 2020, S.R. 2020 No. 96.

<sup>10</sup> Health Protection (Coronavirus, Restrictions) (Amendment No.6) Regulations (Northern Ireland) 2020, S.R. 2020 No. 103.

<sup>11</sup> Health Protection (Coronavirus, Restrictions) (Amendment No.7) Regulations (Northern Ireland) 2020, S.R. 2020 No. 109.

## **The eighth amendment Regulations<sup>12</sup>**

With effect from various dates in late June and early July 2020, several further amendments were made to the Regulations. These included allowing restaurants, cafes, coffee shops, pubs and bars to reopen (in some cases on a restricted basis), permitting the reopening of indoor sports facilities for use by elite athletes, allowing holiday accommodation and visitor attractions to reopen, and allowing the reopening of close contact businesses such as barbers and beauty salons.

Furthermore, places of worship, which were already permitted to open for private prayer, were now also able to hold religious services and bible readings. A new Regulation 4(6)(i) was inserted to make clear that a place of worship may be used for such services or readings. Also, the Regulation 5(2) list of examples of reasonable excuses for leaving home was amended so that sub-paragraph (n) now additionally referred to attending a place of worship “to attend a religious service or bible reading”. These amendments took effect at 11.00pm on 28 June 2020.

## **The ninth amendment Regulations<sup>13</sup>**

With effect from 11.00pm on 29 June 2020 – the day before the funeral – the Regulations were amended so as to increase the maximum attendance of people who were not members of the same household at an outdoor gathering or ceremony, from ten people to thirty people. This was achieved by a series of amendments:

- In Regulations 4(6)(d) and (g)(ii) (concerning marriage ceremonies), the references to “ten persons” were replaced with “thirty people”.
- In Regulation 6, the general rule prohibiting participation in a gathering in a public place of more than two people was amended to refer to thirty people.
- Regulation 6A was replaced by a new provision allowing participation in an outdoor gathering consisting of up to thirty people (with no reference to whether or not they were members of the same household).

The Explanatory Memorandum stated:

“Regulations 6, 6A and 6B of the principal Regulations (restrictions on gatherings) provide for a person to participate in an outdoor gathering or ceremony. Allowing up to 30 people who are not members of the same household to meet together outdoors will promote responsible social interaction and a gradual return to normality and is consistent with Step 3 of the Executive Approach to Decision-Making.”

Importantly, the general rule prohibiting gatherings in public of more than thirty people remained subject to an exception for funerals – that is, as of 11.00pm on 29 June 2020, the newly amended Regulation 6 provided:

---

<sup>12</sup> Health Protection (Coronavirus, Restrictions) (Amendment No.8) Regulations (Northern Ireland) 2020, S.R. 2020 No. 118.

<sup>13</sup> Health Protection (Coronavirus, Restrictions) (Amendment No.9) Regulations (Northern Ireland) 2020, S.R. 2020 No. 121.

## **“6. Restrictions on gatherings**

Subject to regulations 6A and 6B, during the emergency period, no person may participate in a gathering in a public place of more than thirty people except—

[...]

(c) to attend a funeral or a place of worship, in accordance with regulation 4(6)(f) or a religious service or bible reading, in accordance with regulation 4(6)(i) [...]

Regulation 4(6)(f) concerned the use of a place of worship to broadcast by way of loudspeaker or radio an act of worship to worshippers present in a vehicle on the premises. Regulation 4(6)(i) concerned the use of a place of worship to hold religious services and bible readings. Because those provisions both related to the second part of Regulation 6(c) (“to attend... a place of worship”), the first part of Regulation 6(c) (“to attend a funeral”) was unqualified.

We also note the opening words in Regulation 6 (as amended): “Subject to regulations 6A and 6B”. As noted above, those words were added by the third amendment Regulations, at a time when (in simple terms) the rule was a maximum limit of two people gathering in a public place indoors and six people gathering outdoors. By the time of the ninth amendment Regulations, Regulation 6A provided: “During the emergency period, a person may participate in an outdoor gathering consisting of up to thirty people.” Regulation 6B was about marriage and civil partnership ceremonies and is not relevant for our purposes. But the phrase “Subject to regulations 6A and 6B” in Regulation 6 potentially creates confusion. This is because Regulation 6 established the general rule that no person may participate in a gathering in a public place of more than thirty people, and then set out certain exceptions to that rule (including funerals and religious services). However, the general rule was expressed as being “subject to” another rule (Regulation 6A), which provided that a person may participate in outdoor gatherings of up to thirty people. It is unclear whether the funeral exception to the general rule in Regulation 6 was “subject to” the rule in Regulation 6A, which could be read as limiting all outdoor gatherings – even funerals – to thirty people.

In our view, it was not. This is because Regulation 6A gave permission (“During the emergency period, a person may participate in an outdoor gathering consisting of up to thirty people”). It did not prohibit outdoor gatherings of more than thirty people. The prohibition was found in Regulation 6, to which funerals and religious services were exceptions. Because funerals and religious services were exceptions to the prohibition on public gatherings of more than thirty, Regulation 6A had no effect.

Following this logic, the words “subject to Regulations 6A and 6B” in Regulation 6 were unnecessary. We think that conclusion is unavoidable, because Regulation 6A did not expressly prohibit outdoor gatherings of more than thirty.

A court would be likely to take a common-sense view of what the Regulations were trying to achieve and see funerals as exceptions to the general rule that gatherings should be limited to thirty people, and apply this to both the indoor and outdoor components of a funeral. Given that the purpose of the Regulations was to impose restrictions in the interests of protecting public health, and given that outdoor gatherings pose a lower risk of transmission than indoor gatherings, it would be

surprising if there were no limit on attendance at an indoor funeral gathering but a limit of thirty people at an outdoor funeral gathering.<sup>14</sup>

We note that the PPS also appears to have taken the view that attendance at a funeral (whether indoors or outdoors) was unlimited. Later in this chapter, we assess the PPS public statement and decisions in some detail with reference to the policing actions of the PSNI. Commenting on the numbers of attendees allowed at a funeral, the [PPS public statement](#) reads as follows:

“From 29 June 2020 at 11.00pm, the number of persons who could gather indoors in a public place was increased from 2 to 30; and the number that could gather outdoors was increased from 10 to 30. There remained no restriction on the number of people who could attend a funeral.”

Accordingly, in our view, a court would find that, as at 11.00pm on 29 June 2020, there was no restriction on the number of people who could participate in a gathering in a public place to attend a funeral.

However, the list of reasonable excuses for leaving home in Regulation 5(2) had not been amended in a corresponding manner. That is, as at 11.00pm on 29 June 2020, attendance at a funeral was a ‘reasonable excuse’ to leave the place where a person was living, but only when the funeral was for a member of that person’s household, a close family member, or (if no family or household members were present), a friend.

On the other hand, visiting a burial ground **would** have constituted a reasonable excuse for leaving home if the visit was “to pay respects to a member of the person’s household, family member or friend” (Regulation 5(2)(ga)); and attending “a religious service or bible reading” would also have been a reasonable excuse for leaving home.

### **The tenth amendment Regulations<sup>15</sup>**

With effect from 11.30pm on 2 July 2020 and 11.00pm on 5 July 2020, further successive amendments were made to the Regulations. These mostly permitted the reopening of certain public places.

The amendments also included provisions relating to funerals. The relevant example of a reasonable excuse for leaving home, at Regulation 5(2)(g), was replaced by the following: “to attend a funeral”. This amendment removed the previous requirement that the funeral was for a member of the person’s household or a close family member, or, in the absence of such a person, a friend. This amendment took effect from 11.30pm on 2 July 2020.

The Explanatory Memorandum stated that the purpose of this amendment was “to ensure that funerals are no longer restricted to close family or friends” (paragraph 2.1), and explained (at paragraph 5.9):

“For reasons of consistency and clarity, the reference in regulation 5 to who might attend a funeral should be removed now that the numbers of people permitted to

---

<sup>14</sup> Although we note that this matter is not addressed in the Explanatory Notes to the Amendment No. 9 Regulations.

<sup>15</sup> Health Protection (Coronavirus, Restrictions) (Amendment No.10) Regulations (Northern Ireland) 2020, S.R. 2020 No. 128.

gather outside have been increased, and changes to regulation 6 would clarify that summer schools and schemes can operate.”

Accordingly, from 11.30pm on 2 July 2020, attending a funeral was a reasonable excuse for leaving home, irrespective of the relationship between the attendee and the deceased.

## **Summary of applicable provisions concerning funerals as at 30 June 2020**

In this section, we will explore the Regulations in force at the time of the funeral and provide observations in relation to their application and interpretation by the PSNI and the PPS. We further highlight the complexities and conflicts within the Regulations and the challenges that the PSNI and the PPS faced.

The relevant provisions of the Regulations that were in force as at the date of Mr Storey’s funeral on 30 June 2020 can be summarised as follows:

Regulation 5(1) prohibited an individual from leaving home without reasonable excuse, and Regulation 5(2) provided an indicative list of examples of reasonable excuses for leaving home. In particular:

- Regulation 5(2)(g) permitted a person to attend a funeral but only if the deceased was a member of the person’s household or a close family member, or, in the absence of such a person, a friend.
- Regulation 5(2)(ga) permitted a person to visit a burial ground to pay respects to a member of the person’s household, a family member or a friend.
- Regulation 5(2)(n) permitted a person to attend a religious service.

Regulation 6 prohibited gatherings in a public place (indoors or outdoors) of more than thirty persons but provided for some exceptions where no numerical restriction would apply, one of which (Regulation 6(c)) related to funerals.

Regulation 6A permitted outdoor gatherings for any purpose so long as the number of individuals involved did not exceed thirty.

In our view, and the view of the PPS in its public statement, it would have been extremely challenging for the police to interpret and apply the relevant provisions of the Regulations in order to identify what conduct was and was not permitted as at 30 June 2020.

The first difficulty (not specifically mentioned by the PPS) is that there was no definition in the Regulations of what constituted a “funeral” for the purposes of these provisions – for example, whether this would include a wake, a procession with the deceased’s body from one venue to another, or a gathering taking place immediately after the burial or cremation to remember the deceased. This gives rise to difficulties of interpretation and application of the law in cases of funerals comprising several stages, such as Mr Storey’s. Nor are we aware of any court judgments that have had to interpret or apply these provisions of the Regulations (or any analogous provisions in the Regulations applicable in other parts of the United Kingdom). One might expect a court to take a relatively generous approach to the meaning of “funeral” in this

context, so as to avoid criminalising conduct that was part of a funeral even if it was not strictly speaking the actual ceremony where the deceased was buried or cremated. However, differentiating between the burial or cremation itself, and the other related activities taking place before or after it, would require careful evaluation of the facts.

In this regard, we note, for example, that the equivalent Health Protection Regulations in Scotland<sup>16</sup> distinguish between a “funeral” and “a commemorative event for a person who has died but is not a wake or a funeral tea” (both of which were permissible uses of a place of worship in Scotland at an earlier stage in the pandemic: see paragraph 1A(2)(b) of Schedule 5 to those Regulations, now revoked). Recent government guidance on coronavirus restrictions in England draws a similar distinction between “funerals” and “commemorative events”, with the latter described as “religious, belief-based or commemorative events following a person’s death, such as stone-setting ceremonies, the scattering of ashes or a wake”.<sup>17</sup> There was no such distinction in the Northern Ireland Regulations at the relevant time.

We have found that as early as April 2020, and during the course of planning for their COVID-19 response in respect of funerals, the PSNI identified the significance of the lack of any legal definition of a funeral within the Regulations or any other legislation. The PSNI therefore sought advice on this specific issue from many subject matter experts including the PSNI Legal Services Department, the College of Policing, the Association of Police Lawyers and other police legal teams.

The outcome of this advice was that the definition of a funeral for the specific purposes of the Regulations remained unresolved, and this fact was highlighted within the PSNI’s *Funeral Guidance – COVID 19 Regulations* document.

Leaving aside the precise meaning of the term “funeral” as used in the Regulations, other difficulties of interpretation also arose on 30 June 2020.

There was a tension between the restrictive wording in Regulation 5(2)(g) as to who was permitted to attend a funeral, and the provision in Regulation 6 that public gatherings could occur with a maximum of thirty persons attending or, in the case of a funeral, with no restriction on numbers. Regulation 5(2)(g) appears to have been left in place due to an oversight (which is, perhaps, understandable given the frequency and speed with which the Regulations were being amended as the policy intent evolved) because it did not reflect the intended relaxation of the restrictions on gatherings. This was put right two days after the funeral, on 2 July 2020, when Regulation 5(2)(g) was amended to make clear that funerals were no longer restricted to close family or friends.

By contrast to the restrictive wording in Regulation 5(2)(g) regarding attending a “funeral”, Regulation 5(2)(n) permitted attendance at a “religious service” in general terms – that is, without restricting the category or number of persons who could attend. The PPS notes that there are finely balanced legal arguments as to

---

<sup>16</sup> Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020

<sup>17</sup> See [“COVID-19: guidance for arranging or attending a funeral during the coronavirus pandemic”](#), Department of Health & Social Care, updated 13 April 2021.

whether Regulation 5(2)(n) or 5(2)(g) was the applicable Regulation in relation to the funeral Mass held at St Agnes's Church.

A similar tension exists between Regulation 5(2)(g) and Regulation 5(2)(ga), which permitted a person to leave home to visit a burial ground to pay respects to a member of their household, a family member or a "friend".

The PPS note that there are finely balanced legal arguments as to whether Regulation 5(2)(ga) provided a defence for all those who attended the funeral ceremony at Milltown Cemetery.

Documents examined during our inspection demonstrated that the PSNI understood that the Regulations had changed overnight. And, in the absence of any new or consolidated guidelines from the Department of Health, officers were unsure of the legal effect of the amendments as they applied to attendees at the funeral.

We have found that the PSNI was still trying to understand the confusing and complex changes to the Regulations right up to the morning of the funeral. Officers sought urgent advice from the PSNI Legal Services Department. But the brief response it provided did not accurately reflect the Regulations. As we have commented above, the Regulations that were in place at the time were ambiguous. It is understandable that, in the time constraints they were under, the PSNI Legal Services Department interpreted the law incorrectly.

## **Human rights legislation and case law**

In addition to the relevant provisions of the Regulations themselves, it is also necessary to consider the Human Rights Act 1998, which applies in Northern Ireland. It gives effect in domestic law to various rights protected by the European Convention on Human Rights. These include the rights under Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 11 (freedom of assembly).

As a public authority under section 6 of the 1998 Act, the police have a legal obligation to act compatibly with human rights, including rights under Articles 9, 10 and 11. The police must not intervene to restrict these rights unless it is necessary and proportionate to do so (these are sometimes called the police's 'negative obligations'). In addition, the police also have positive obligations. They must, for example, consider how people who are exercising these rights in public can access first aid services and also try to maintain channels of communication with organisers of public gatherings.

But Articles 9, 10 and 11 are all "qualified rights", the exercise of which can in certain circumstances lawfully be restricted. Under Article 11(2), for example, the legal test is whether any interferences by the police are "prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others". Articles 9(2) and 10(2) make similar provision.

The overarching question in every case is how to strike a fair balance between the conflicting rights and interests of individuals who are exercising their Article 9, 10 and 11 rights on the one hand and the general community on the other, and how this

balance should be struck in a public health crisis. This is at the centre of defining the reach and content of the rights protected under Articles 9, 10 and 11.

The courts have previously had to consider the compatibility with human rights of restrictions imposed to contain and suppress the transmission of coronavirus.

In [Dolan v Secretary of State for Health \[2020\] EWCA Civ 1605, \[2021\] 1 All ER 780](#), the Court of Appeal considered a judicial review challenge to the Health Protection (Coronavirus, Restrictions) (England) Regulations (SI 2020/350), which were the first 'lockdown' regulations in England, made on 26 March 2020.

One aspect of the challenge was whether Regulation 7, which prohibited gatherings of more than two people unless they came from the same household or were gathering for specified purposes, was compatible with Article 11 (freedom of assembly).

The Court of Appeal concluded that the challenge to the legislation was unarguable because a "reasonable excuse" defence was available, which enabled consideration to be given to Article 11:

"...the regulations cannot be regarded as incompatible with article 11 given the express possibility of an exception where there was a reasonable excuse. It may well be that in the vast majority of cases there will be no reasonable excuse for a breach of regulation 7 as originally enacted. There were powerful public interests which lay behind the enactment of regulation 7, given the gravity of the pandemic in late March."

It is important to note that the judgment focused purely on whether the regulations were compatible with human rights, and not any particular decision taken before or during the protest. Such decisions require highly fact-specific analysis of human rights considerations by the police.

The same approach was followed by the High Court in [Leigh v Commissioner of Police of the Metropolis \[2021\] EWHC 661 \(Admin\)](#), which concerned the vigil for Sarah Everard on Clapham Common and is addressed in detail in our previous report [An inspection of the Metropolitan Police Service's policing of a vigil held in commemoration of Sarah Everard on Clapham Common on Saturday 13 March 2021](#).

In essence, therefore, the legislation is capable of being applied in a way that is compatible with human rights through the operation of the "reasonable excuse" defence. This ensures that the restrictions on human rights imposed by the legislation go no further than is necessary and proportionate to protect public health.

The Regulations in force in Northern Ireland at the time of the Mr Storey's funeral must equally be interpreted and applied in a way that protects and gives effect to human rights. When considering whether to take enforcement action in respect of apparent breaches of restrictions in the Regulations, the police had to consider whether, in all the circumstances, enforcing the restrictions would be a disproportionate interference with the relevant individuals' human rights, such that, if prosecuted for an offence under the Regulations, they would be able to establish a "reasonable excuse" defence.

## The Northern Ireland Policing Board review

The Northern Ireland Policing Board (NIPB) commissioned a [thematic review on policing of COVID-19](#) covering the period March 2020–June 2020. The report was published on 12 November 2020. The review was conducted by the Board's retained human rights adviser and legal expert, John Wadham. The review focused on the human rights aspects of the Public Health Regulations and how they were policed. It covered a wide range of policing approaches, topics and legal issues that are outside the scope of our inspection. Mr Wadham's review did not specifically consider the policing of funerals. Nor did it inspect or assess the PSNI's policing of Mr Storey's funeral on 30 June 2020.

We have assessed this review and interviewed the author and the commissioning body as part of our inspection. The report provides introductory commentary on the state of the Regulations and guidance available to the PSNI in the context of policing in Northern Ireland:

“If the choice is to use the police to protect our health then there is a very powerful argument for the health experts, at the Department of Health, to take responsibility and to assist the PSNI by suggesting overall objectives and giving guidance on the level of transmission risks. If the basis of the law was to reduce person to person contact, household to household contact and location to location contacts then that should have been made clear in the Regulations and the PSNI should have been supplied with daily ‘threat levels’ that could be shared with officers and in turn shared in interactions with members of the public. These threat level assessments would have also helped the PSNI and officers to gauge how far up the four Es enforcement escalation process they should go to achieve the objective of keeping us safe.\*”

([The report footnote states] \*It is understood that senior officers proposed this very approach but it was not accepted by the Department of Health.)

The report comments on the principle of “policing by consent”. It highlights the dangers of the changes and challenges to policing presented by the pandemic. It also comments on how the PSNI has had to apply frequently changing Regulations:

“Giving the police powers to tell people how to live their own lives is fraught with danger, however important the objective is. Support and confidence in the police is very difficult to build and very easy to erode.

The lack of clarity around the meaning of the Regulations and subsequent amendments and guidelines is likely to have had a significant impact on how well the public consider the PSNI to have policed during lockdown. In the early days of the pandemic the PSNI were criticised over their handling of new powers to enforce the lockdown, with some arguing they are going beyond what the legislation allows. This led to senior officers calling for greater clarity from the Department of Health on the Regulations, while recognising the very difficult circumstances within which the Regulations were drafted. The PSNI recognised the impact its actions had on public confidence.”

When we interviewed John Wadham, he told us that the application of:

“confused criminal laws do not make prosecution easy. There were a number of changes, there was a lack of understanding and this was not PSNI’s fault.”

He added that:

“Police don’t have time to sort through the rules for two hours before they start their shift.”

While acknowledging that things were happening quickly, Mr Wadham felt that “legislators still could have consulted” and that “overall, there was a lack of consultation and guidance” (see Mr Wadham’s recommendations below). He suggested two types of guidance that would be useful for the police and public alike:

- How to stay safe.
- How to interpret the Regulations.

Mr Wadham believed that the Northern Ireland Executive and the Department of Health had provided insufficient guidance to the PSNI about applying the Regulations. He felt the National Police Chiefs’ Council and College of Policing’s 4Es approach would have benefitted from improved consultation across the whole police service. We reached the same broad conclusion in our recent report [\*Policing in the pandemic – The police response to the coronavirus pandemic during 2020.\*](#)

He further suggested that the Northern Ireland Executive and the PSNI should have been more consultative from the outset (see Recommendation 1 below). If they had been, a different outcome may have been achieved. This may be a further lesson to be learned. He commented that:

“PPS early advice may have adjusted the force’s approach. It shouldn’t be down to a police officer trying to interpret the law on the day to ensure the safest outcome for large gatherings combined with ensuring the prosecution of those who break the law.”

We reviewed the thematic review’s specific recommendations in relation to how the Northern Ireland Executive and Assembly legislated the Regulations. The two relevant recommendations about “Making Laws” were:

### **Recommendation 1**

“It is a fundamental principle of any democracy that it makes its laws, particularly those creating criminal offences, in an open and transparent manner and elected representatives are consulted in advance. Not surprisingly human rights principles require criminal laws to be clear, precise and understandable by those that have to obey them.

The Executive should always consult the Assembly on draft laws that create criminal offences, even if this has to occur after the implementation of those laws in an emergency. Any such drafts should be subject to specific advanced consultation with the PSNI, the Policing Board and the Northern Ireland Human

Rights Commission. These principles should also apply to any proposed amendments to the law.”

### **Recommendation 5**

“The Department of Health should have a greater role in working with police on policing strategies where laws are designed to protect the health of the community.”

We agree with both recommendations. Mr Wadham was unclear whether the Board had considered or progressed any of the recommendations. We feel that there is merit in so doing. Clearer guidance and improved consultative arrangements would help all those involved in keeping the public safe.

## **The statement of the Attorney General in relation to the Regulations**

It is clear from our inspection that in the early stages of the pandemic there was confusion about interpretation of the Regulations. This was the case at senior levels of the Northern Ireland Executive and the PSNI.

On 16 April 2020, the Attorney General for Northern Ireland, John Larkin QC wrote to the Chief Constable. His view was that the PSNI had misinterpreted [Regulation 5 of The Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#), which related to restrictions on movement. Via the media, the PSNI had advised the public that travelling to a place in order to take exercise was prohibited by Regulation 5.

In the letter, Mr Larkin emphasised the need for the law to be clear. He said:

“It is vital that the demands of our criminal law be as clear as possible; in the context of our present health emergency citizens should not suffer unnecessary anxiety about whether or not their conduct breaches the law.”

He went on to say, “I begin by observing that Regulation 5 is not particularly ‘user friendly’.” He explained how, in his view, contrary to the PSNI’s interpretation, the Regulations did not prohibit travel in order to exercise. He asked that the service clarify its message to show that travel to exercise was permitted.

Mr Larkin emphasised that the police had no discretion about whether (or not) an offence had been committed. They only had discretion in dealing with suspected breaches. He explained that:

“...the content of the criminal law in Regulation 5 cannot depend on how police discretion is exercised; rather, police discretion comes into play when the requirements of the criminal law have been breached.”

As a result, on 17 April 2020, the Chief Constable sent a letter to the Minister for Health, Robin Swann MLA. The letter addressed many issues but, in particular, the Chief Constable asked:

“...that any plans to change them [the Regulations] are the subject of prior consultation with PSNI to ensure the policing implications of any proposed changes are fully understood.”

He also asked for clarity over Regulation 5. In particular, he wanted to know whether people could travel to then take exercise:

“Given the challenge posed within the Attorney General’s letter ... alongside the significant media and political interest in how the regulations are being enforced, I believe it is vital for the PSNI to ask for as much legal clarity from your Department and the Executive as to how Regulation 5 should be interpreted, in particular with regard to what travel is permissible. I respect his role, and in responding to him I will require absolute clarity of the Department of Health’s position on the issued raised, and in particular the issue of travel for exercise.”

He asked again for the Department of Health and the wider Executive to “bring legally-based clarity to the public debate as soon as possible”.

The chair of the NIPB also wrote to the Minister for Health on 20 April 2020 stating:

“...we support the Chief Constable’s request for clarity within the Regulations given the increasing negative public and media challenge to the legality of police actions and the potential damage this could have to public confidence in the service overall.

Your Department has primary responsibility for the Regulations. It is thus unequivocal that you have a duty to provide clarity (underpinned by legal advice) as to how Regulation 5 should be interpreted. It is imperative that both the PSNI and the public are provided with clear, comprehensive and unambiguous guidance as to what constitutes unlawful behaviour under the Regulations (and in particular Regulations 4, 5 & 6). Only on receipt of the same can the PSNI adequately and lawfully support the Department of Health in what is a public health response to COVID-19.”

On 21 April 2020, the Minister for Health responded to the Chief Constable. He explained that there had been correspondence with the Attorney General, the First Minister and the deputy First Minister in which he had requested clarity about Regulation 5. But the Department of Health Solicitor was satisfied that the Regulation was functioning as intended. In those circumstances, he was not minded to amend Regulation 5 but would keep the matter under review.

We were surprised that this direct request from the Chief Constable and the NIPB for support and guidance, and to be consulted, largely remained unanswered.

# National police guidance on policing the pandemic and the 4Es approach

The National Police Chiefs' Council (NPCC) established a national operation to lead the police response to the pandemic, which it called 'Operation Talla'. This covers forces in England, Scotland, Wales and Northern Ireland. The operation is led by the NPCC Chair, Chief Constable Martin Hewitt, who, with his team, holds regular meetings with chief constables to discuss and explain progress.

Operation Talla has had engagement from all four nations throughout the pandemic, with all police services sharing a desire to be consistent in approach whenever possible. Operation Talla has had to navigate the complexities of the different administrations, legislation, regulations and policing arrangements in England, Northern Ireland, Wales and Scotland.

Consequently, the Operation Talla team has had close involvement in discussions and negotiations about the formulation of legislation in England and, working with the College of Policing, has generated guidance for officers in England and Wales. But the legislation and officer guidance in Northern Ireland and Scotland have been managed by each respective police service separately.

As part of Operation Talla, the NPCC and the College of Policing introduced the "4Es" four-step escalation principles. Their aim was to assist officers to apply the new Regulations introduced at speed as part of the national COVID-19 response. The guidance states that, when encountering members of the public who are suspected of breaching the Regulations, officers are expected to:

- Engage – officers speak to people and try to establish their awareness and understanding of the situation. They may ask people about their circumstances if they are out in public. They give people the opportunity to express their views. They listen and take people's responses into account.
- Explain – officers try to educate people about any personal risks they are taking. They will explain the social distancing regulations and highlight the responsibilities we all share. Officers treat people with dignity and respect. They highlight their trustworthy motives by explaining wider social factors, such as the risks to public health and the NHS by not sticking to social distancing.
- Encourage – officers may need to guide individuals, suggesting they return home. Officers can encourage people to act reasonably, emphasising that staying at home helps save lives. They demonstrate consistency in their approach and are willing to explain why they are requesting a certain course of action.

If an officer has been explicit in their request for someone to take action, has explained the risk and encouraged people to be reasonable to save lives and they have refused, then it may become necessary to:

- Enforce – officers may, as a last resort, remove a person to the place where they live, using reasonable force only if it is a necessary and proportionate means of ensuring compliance. They may also fine individual(s) for breach of the Regulations.”

The second E, “Explain”, contains both a health protection and social responsibility message, and refers to “social distancing regulations”. Social distancing was not included as a requirement or restriction in the Regulations (save specifically in relation to burial grounds under the first amendment Regulations described above); it was instead a general guideline for people to adhere to in order to reduce the spread of the virus. It does not guide the police to issue a warning about potential breaches of the Regulations that could be committed. And it doesn’t advise them to explain the legal consequences of an individual’s actions or proposed actions.

The 4Es guidance was issued to encourage the police service to secure compliance with the new health protection regulations whenever possible. Enforcement was to be a last resort. The 4Es approach was designed as a guidance framework, rather than an explicit and rigid series of steps, with each situation to be assessed on its merits.

## **The PSNI interpretation of the 4Es guidance**

Both the PSNI and Police Scotland have sought to reflect the 4Es approach in their own guidance. But they have had to adapt the NPCC’s Operation Talla guidance to meet their own local needs.

We examined a series of PSNI documents that relate to or provide guidance to officers on the use of the 4Es. When we looked specifically at “Explain” as defined in two of the PSNI’s documents, we found that they went further than the national guidance. Both documents stated that officers should explain the health protection and social responsibility messages, and the national guidance on social distancing, but they also included that officers should remind people of the new legislation:

- The Criminal Justice Strategy – Public Order 2020, published in June 2020, requires officers to “Remind persons of the new legislation and REQUIRE them to comply.”
- The “Practical Peeler” guidance document about the Regulations provides officers with a guide to the 4Es. For “Explain”, it states:

“Engage, Explain and Encourage voluntary compliance, BEFORE resorting to Enforcement ... Remind persons of the new legislation and REQUIRE them to comply.”

When we looked at the PSNI’s planning documents for Mr Storey’s funeral, referred to later in this report, we found that there was some inconsistency about whether “Explain” meant only emphasising the health protection message or whether officers should explain the specific requirements of the legislation as well.

The COVID-19 Gold Strategy was reviewed by the PSNI on 27 April 2020. It was in line with the national Operation Talla guidance and sets out the 4Es, stating that:

“Specifically for Operation TALLA we will adopt the following approach in policing any restrictions imposed by the NI Executive in the following manner...”

It goes on to define each of the four Es.

For “Explain”, it says: “Explain: officers will explain the risks to public health, and to the NHS in line with government guidance.” It does not emphasise the need for officers to explain the legislation.

Conversely, the PSNI’s funeral planning document *Funeral Guidance – COVID 19 Regulations*, updated on 22 June 2020, does emphasise the need to explain the Regulations. It states:

“...advice should be given with regard the current Regulations (The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020)” and;

“Police deployed on this event should follow the Service Guidelines with regard to Covid 19 restrictions, which includes: ‘...Explain why staying at home or dispersal is vital to reduce the spread of this virus ...’”

Again, as we will hear later in the report, the “Funeral of Bobby Storey Operational Order”, which was updated the evening before the funeral, set the style and tone of the operation. It advised the use of the “3Es” but did not define them:

“Officers should ensure that any interactions with members of the public will be following the principles of the 3Es – Engage, Explain & Encourage.”

We believe that the PSNI introduced some inconsistencies in the service’s interpretation of the national 4Es guidance within its planning documentation. It would not be surprising if these led to other inconsistencies with the policing of funerals, associated investigations, and subsequent evidential submissions to the PPS.

But it is also evident from the PPS public statement referred to later in this report (The PPS public statements) that the PPS had an expectation that the second E, “Explain”, should involve officers interpreting the law and warning of the consequences of potential breaches in the Regulations.

## **The PSNI guidance on policing funerals in the pandemic**

In producing guidance for policing funerals during the pandemic, the PSNI found that the Regulations referred to, but didn’t define, a funeral. It wasn’t clear whether a funeral would include a wake, a procession with the deceased’s body from one venue to another, or a gathering taking place immediately after a burial or cremation. This made it extremely difficult to apply the law in funerals comprising several stages such as Mr Storey’s. In April 2020, the PSNI sought advice on the definition of funerals from its Legal Services Department and other sources. But this proved unhelpful because a definition couldn’t be agreed.

The Legal Services Department recommended that the PSNI should not enforce any aspect of the Regulations relating to funerals until it received clarity from the Northern Ireland Executive.

The PSNI guidance for policing funerals under COVID-19 Regulations states:

“A point of contact from within the family circle should be sought. Given the emotive nature of the event this may not be possible.”

The guidance goes on to say that it is important to give the family the chance to work with police so that the Regulations can be adhered to. It says there should be a consistent approach to funerals that involves gathering evidence of potential offences.

The neighbourhood policing team (NPT) and the single point of contact (SPOC) should engage with the family. They should ascertain what influence the family can bring to bear on advising the community about the current Regulations. The NPT and the SPOC should also establish with the funeral director and clergy the route of the cortège and find out about planned deviations. For example, some cortèges stop outside the family home or other significant place.

The guidance ends by acknowledging that:

“Although it is recognised that a funeral may be in breach of the Health Regulations, the community impact of police taking enforcement action to disrupt or prevent a funeral or the potential use of force required to achieve this end presents such a risk to community confidence and cohesion, as well as to police officers in taking enforcement action.”

## **Communications during the pandemic**

In general, the PSNI communicated well with the public during the pandemic. It used social media platforms to explain its policing approach and reassure the public of its commitment to police fairly. Posts were frequently supported by public health messages.

The PSNI website provided information about the Regulations. It explained the service’s intention to grade reports of suspected breaches of the Regulations and respond accordingly. A running account of enforcement action was published. Enforcement of the Regulations was always a last resort, but one that the PSNI showed it was prepared to take.

We reviewed some of the PSNI’s communication with the public and its staff. We found it to be engaging and sought to encourage compliance with the Regulations. We found a few communications that referred to the 4Es in detail. The public messages, posts and staff bulletins consistently kept within the spirit of the 4Es.

# Mr Storey's funeral

## PSNI engagement with funeral organisers

Gerry Kelly is a Sinn Féin politician and Member of the Legislative Assembly (MLA). He is also a political member of the Northern Ireland Policing Board (NIPB).

In mid-June, Mr Kelly alerted the Police Service of Northern Ireland (PSNI) that Mr Storey was in declining health and likely to die within days. This information helped the service prepare for a high-profile funeral in the community of West Belfast. Mr Kelly told them that around 10,000 people were expected to attend his funeral. Similar numbers had attended the funeral of Martin McGuinness in March 2017. He also expected prominent Sinn Féin politicians to attend.

Mr Storey died on 21 June 2020. Following his death and in the lead-up to his funeral, political comment was, in the main, confined to Republican tributes and Unionist expectations about policing and the observance of Regulations. It was reported that former Sinn Féin president Gerry Adams was expected to give an oration at the upcoming funeral and that “thousands” of mourners were expected to attend.

Newspapers reported that senior Republicans had been urged to ensure that social distancing measures were respected.

A Democratic Unionist Party (DUP) member was quoted as saying:

“We also have to remember that, whatever your view on the individual involved, this is still a grieving family and we want to see policing of the crowds as proportionate and appropriate.”

On 21 June, the PSNI duty officer contacted Mr Kelly when the service heard about Mr Storey's death. At this stage, it was too early to seek details about funeral arrangements.

On 22 June, Mr Kelly telephoned the PSNI Deputy Chief Constable (DCC). He told him it was anticipated that Mr Storey's funeral would take place the following week. Mr Kelly asked who the funeral Gold Commander would be. The following day, the DCC provided this information to Mr Kelly.

Later that week, Mr Kelly and the PSNI [Gold](#) and [Silver](#) Commanders talked about the funeral. Contact was through text messages, telephone calls and meetings. This shows the informality of the contact, which was, at times, without record.

The funeral Gold Commander told us that, during his conversation with Mr Kelly, he raised a concern about Paramilitary trappings (for example, flags and gunshots). He had in mind the funeral of Peggy O'Hara in 2015, which resulted in prosecutions.

Mr Kelly reassured him. He didn't want to go into details but said there would be no Paramilitary trappings at the funeral. He said a lot of people would attend and that the best way to manage the numbers wasn't with a police presence. Mr Kelly explained that the funeral organisers, on behalf of the family, had engaged a company to steward it. The stewards would wear white shirts and black trousers but no berets or sunglasses.

The Gold Commander told us he thought there was always an inevitability that there would be breaches of the Regulations on the day of the funeral.

He said he told Mr Kelly (though he didn't record it) that the PSNI would follow up on any breaches of the Regulations after the funeral. This was consistent with how the PSNI had approached other funerals during the pandemic.

As the funeral drew near, the frequency of contact increased. The Silver Commander and Mr Kelly spoke six times before the funeral.

During one conversation, Mr Kelly raised concerns about public safety and traffic management at the funeral. He asked the PSNI to carry out searches of the funeral venues. This was because senior Sinn Féin politicians and leadership would be attending. The PSNI agreed to this: it is standard practice for the police to search venues before high-profile events. Mr Kelly thought it might be difficult to promote social distancing and keep traffic flowing. But he explained there would be a comprehensive stewarding plan to help.

We understand that an events-planning company, used frequently by Sinn Féin, helped develop this plan. We know that this company passed a document to the PSNI. The Gold Commander described this document as being more of a risk assessment than a plan. We tried to speak to the events company but got no response.

The Silver Commander told us that the engagement in the lead-up to Mr Storey's funeral was consistent with other events they had commanded.

The established relationship between the PSNI and Mr Kelly inevitably affords him direct contact with senior officers. This allows them to discuss high-profile community events and issues. We have been told that such contact between politicians and senior officers, irrespective of political affiliation, isn't unusual.

As an example, they explained that in April 2020 they engaged with civic leaders, including Mr Kelly, about another funeral during the pandemic. They said this type of contact with civic leaders and event organisers helped make funerals more peaceful.

The Silver Commander told us they were confident that, as an MLA, Mr Kelly knew about the Regulations and the consequences of breaches. But we saw nothing to show that any meaningful discussions about the Regulations took place.

We were told by the Gold and Silver Commanders that, during conversations with Mr Kelly, they consistently reinforced the legal requirement to abide by the Regulations. Mr Kelly told them that the organisers intended to abide by the Regulations, but that the Regulations would change before the funeral.

There was a lack of comprehensive records of the contact between senior PSNI leaders and Mr Kelly. We understand that this was a factor in the Public Prosecution

Service (PPS) decision not to prosecute. Officers were unable to definitively show that they had fully adopted the 4Es approach during their engagement with Mr Kelly. Without this communication, Mr Kelly wouldn't have been able to tell mourners about the consequences of breaching the Regulations.

The amenities officer at Belfast City Council telephoned the PSNI and asked if it wanted to do a site visit at Roselawn Cemetery and Crematorium before Mr Storey's funeral. The Gold Commander was consulted but concluded that a visit wasn't necessary because no request had been made at a senior level. Consequently, no site visit was carried out.

As far as we are aware, there was no further contact between Belfast City Council and the PSNI.

### **The PSNI planning document for Mr Storey's funeral**

We reviewed a PSNI planning document for the funeral of Mr Storey. Although rudimentary, it was generally consistent with the PSNI guidance on policing funerals under COVID-19 Regulations.

It shows that, as soon as the PSNI knew that Mr Storey had died, officers started contacting community figures. This was to gather information about the funeral to inform the policing plan.

In this case, the neighbourhood policing team (NPT) had an existing relationship with the Member of Parliament for Belfast West, Paul Maskey (who was also the family's initial point of contact), and who also contacted the relevant funeral directors.

Soon after, Mr Kelly, a close friend of Mr Storey, became the family's appointed representative, and main contact between the PSNI and the family. Mr Kelly had an established, professional relationship with senior PSNI officers. As such, engagement at a more senior level occurred. In the circumstances, this appeared to us entirely reasonable.

### **The PSNI's plans for Mr Storey's funeral**

In this section, we refer to a police planning meeting and the plans for the funeral, the [Gold Strategy](#) and the [Silver Tactical Plan](#).

#### **The funeral Gold planning meeting**

The Gold and Silver Commanders appointed for the funeral met on 25 June. Also present was the Gold Commander for the weekend preceding the funeral. He was briefed on the funeral planning. This was because the Gold Commander for the funeral was on leave for four days from 26 June. He was due to return to work on the day of the funeral. During his absence, responsibility for decisions relating to the funeral rested with the weekend Gold Commander.

During this meeting, the content of the Gold Strategy was discussed, which would inform the tactical policing plan.

The Gold Commander told us they were clear that they wanted to facilitate a funeral that was sensitive to the family, and planned the policing accordingly.

It was decided that breaches of 40–50 people, socially distanced, may not require police intervention. It was also determined that the Silver Tactical Plan should reflect this, being “as light touch as possible”.

We were told that Gold planning meetings in preparation for large events are normally attended by people from other departments. For example, representatives from the PSNI Legal Services Department and the intelligence team would normally be invited, but they were not included in any Gold planning meetings for Mr Storey’s funeral. Given the high-profile and sensitive nature of this funeral, we think this was a missed opportunity. It may also have been beneficial to have engaged with the PPS at this stage if the PSNI were considering what action would be taken if there were breaches of the Regulations.

Following the planning meeting, the weekend Gold Commander spoke to Mr Kelly. The Gold Commander was on his way home from work at the time. He explained that he would be covering for the four days that the funeral Gold Commander was on leave. They agreed that engagement would continue at a district command level. Mr Kelly again gave assurances that there would be no show of strength and there would be stewards at the funeral. The weekend Gold Commander didn’t make a written record of this call.

Given the high-profile nature of this funeral, we find it surprising that the PSNI didn’t assign a single Gold Commander for the entire funeral period. It is unclear how the funeral Gold Commander would have been able to maintain a full understanding of the funeral planning during leave.

The Chief Constable told us that the PSNI would benefit from having more senior officers available to act as Gold Commanders.

### **Gold Strategy**

In the Gold Strategy, the Gold Commander sets the foundation on which all subsequent planning and deployments rely. The strategy stated the PSNI intention:

“To facilitate the funeral arrangements for Mr. Storey in a dignified manner which takes into account the wishes of his family, is sensitive to all communities and which does not significantly compromise public health in the current pandemic situation.”

The Gold Commander considered the nature of the event:

“This will be a high-profile event given the profile of Mr. Storey and will likely be attended by a range of senior Republican figures and attract significant media interest. The context for policing will include the profile of the event, the likely attendees, the current Health Protection Regulations and the associated restrictions, and the likely scrutiny, by others, of the policing approach.”

The strategy included four working assumptions about the policing operation:

1. There will be communication and co-operation with the police from family representatives, political representatives, clergy, and funeral directors.
2. There will be a significant number of people seeking to show their respects to Mr Storey and/or attend the funeral.
3. There will be a need to manage attendance and arrangements in light of the current Health Protection Regulations and associated restrictions.
4. There is the potential for tensions with police arising from points two and three above.

The strategic intention must be read together with the working assumptions, particularly point three.

At face value, these statements could indicate that the PSNI envisaged facilitating the funeral arrangements but only to the extent permitted under the Regulations. We note that the Gold Strategy document didn't try to analyse the scope of the Regulations, which were rapidly changing.

The approach taken in the Gold Strategy seems to us lawful and appropriate, particularly as the document acknowledges the potential relevance of human rights law.

It recorded several strategic objectives consistent with the general police functions in [Section 32 of Police \(Northern Ireland\) Act 2000](#). Included was the need to “facilitate peaceful protest in accordance with Articles 9, 10 & 11 of the European Convention of (sic) Human Rights and provide a lawful and proportionate response to any protest, facilitating the needs and rights of protestors whilst balancing their rights with those of the wider community impacted by the protest activity”.

In broad terms, this correctly states the requirements of human rights law in this context. We would, however, note that the relevant Convention rights were applicable not only in the case of ‘protest’ in the narrow sense, but also to those wishing to gather and express views more broadly.

The objectives support the overall policing aim, with the protection of life and property being paramount.

The policing style for the operation reflects the fact that it was a funeral, with restrictions under the Regulations adding to the sensitivities. It describes how any police deployments and interactions will be as “unobtrusive as possible”.

However, given the high profile of the funeral, and the potential for breaches of the Regulations, we were surprised to find no evidence of the 4Es approach in the Gold Strategy. It is particularly surprising given the working assumptions that family and political representatives would co-operate with the police, so there would have been opportunities to discuss the 4Es. This omission is unfortunate.

## Silver Tactical Plan

The Silver Commander was appointed and remained accountable throughout the planning of Mr Storey's funeral. We think consistency of Silver Command is a good approach.

The Silver Tactical Plan recorded the same strategic intention as the Gold strategy. The threat and risk assessment in the plan identified groups most likely to be affected by the funeral. They included:

- those taking part in the funeral;
- those living or passing through the area; and
- police officers deployed at the funeral.

The plan noted the potentially significant threat to police deployed at the funeral. The risks identified were attack and public disorder.

Anticipating large numbers of mourners, the PSNI considered the possible outcomes of the policing operation. These were described as preferred, acceptable and unacceptable. In terms of compliance with the Regulations, the preferred outcome was no breach. An acceptable outcome was minor breaches and an unacceptable outcome was "widespread breaches ... that persist for a considerable time after [the] funeral".

This seems broadly appropriate, subject to two points. First, the document didn't specify what breaches would be regarded as minor. And, second, the document could be read as viewing the possibility of 'widespread' breaches before or during the funeral as acceptable, so long as they didn't persist for long afterwards.

The Silver Plan considered specific legislation, including human rights legislation and the Regulations.

It briefly set out some relevant provisions of the Regulations. However, it didn't accurately identify the provisions in force at the time of the funeral on 30 June 2020. For example, the plan set out the original wording of Regulation 4(8), but with effect from 24 April 2020 that provision no longer referred to burial grounds or burials. The plan also referred to an earlier version of Regulation 6, which limited a gathering in a public place to ten people (effective 11 June 2020), whereas, with effect from 29 June 2020, the limit was increased to thirty people. Given that the plan covered the period 26–30 June 2020 and would have been drafted before the Amendment Regulations of 29 June 2020, the latter error isn't surprising.

The planned response to any breaches of the Regulations was to deploy police evidence gathering teams (EGTs) to obtain the best evidence for later review and liaison with the PPS. This isn't an unusual way to police funerals and is consistent with the policing of other funerals during the pandemic.

Under the heading 'Options and contingencies', the Silver Plan identified several contingencies, including 'Breach of COVID Health Regulations'. Various other possibilities included minor or serious public disorder and a Paramilitary show of strength. The plan noted that when "minor breaches of the law" occur, the police response must be considered in the context of the preceding paragraphs of the plan,

the location of the event as well as the immediate and long-term community impact, noting that it was likely that “legitimate and political groups may be in attendance to show support”. The plan stated that “[u]ltimate discretion around intervention and the making of arrests will lie with the Silver Commander” and “[t]his discretion must be balanced, however, against the need to maintain resources in place to support the tactical plan and wider policing objectives”. The plan then stated that when “significant breaches of the law” occur, the police response must again remain considered in the context of the preceding paragraphs, the location of the event and the community impact. The discretion over intervention and arrests would remain with the Silver Commander, unless there was a real and immediate risk to life or immediate risk of serious injury, or a significant risk of escalation of public disorder. The wider objectives were identified as being “to maintain the safety of the public and police officers whilst gathering evidence of criminality if it occurs”.

As an overall description of the policing operation that was planned for the funeral, this seems reasonable.

The Silver Plan goes on to make reference to four distinct phases for the funeral:

1. Wake – engagement and deter/prevent operation;
2. Church Service – St Agnes’s Church;
3. Movement of the funeral party to Milltown Cemetery and speeches; and
4. Movement of the funeral party from Milltown Cemetery to Roselawn Crematorium.

At each phase, the plan envisages police ‘engaging’ with the family, funeral directors, community and partners. But the plan doesn’t explain what is meant by engaging in this context, and we found no mention of the 4Es approach. Therefore, it fails to shed light on one of the important issues: whether the police were merely obtaining information about the intentions of those involved in the funeral in order to inform the policing plan, or whether the police said or did anything that might have led those involved to believe that it was permissible to do things that breached or may have breached the Regulations.

## **The organisers’ plan**

During our inspection, the funeral Gold Commander said they were aware of Sinn Féin’s claim that the funeral was “meticulously planned” with the police. But they told us they didn’t think the comment was based on fact. The Gold Commander emphasised the need for the PSNI to look at policing in a wider sense and to keep communication open by adopting a ‘no surprises’ approach with organisers.

We were told that an events-planning company representing Mr Storey’s family and Mr Kelly met the funeral Silver and Bronze Commanders in a video meeting on 29 June. The events company shared a plan (we refer to this document as a plan but the Gold Commander has said it is more accurately described as a risk assessment) that outlined the stewarding arrangements for the funeral.

All stewards were asked to wear the same uniform of plain black trousers, black shoes, a white shirt and a black tie. The plan states that bibs would be supplied to the stewards on the day.

The plan highlighted the measures to maintain social distancing and numbers of people at different stages of the funeral. It stated:

“The cortège will be limited to 30 and this will be strictly enforced.”

And:

“When the service is over and the cortège makes its way to the cemetery, again the cortège will be limited to 30 and this will be strictly adhered to.”

The plan outlined other considerations such as a reduction of the church capacity to maintain social distancing, and managing crowds along the route. It was agreed that stewards would also help to manage the crowds if the PSNI needed to close roads. The PSNI confirmed that there would be searches of the route and venues.

During this video meeting, organisers explained the cortège route. They said it would move from the Storey family home to St Agnes’s Church. Then it would move on to Milltown Cemetery. From there, the cortège would move on to Roselawn for the cremation. There was no mention of the fact that the events company’s stewards were going to line the route on the day of the funeral.

We understand there was also a conversation about how the Regulations might change before the funeral. It was expected that changes would allow larger numbers of people to attend funerals. There is no record that the 4Es approach was discussed during this meeting. Again, this is unfortunate and a missed opportunity.

We have reviewed the plan given to the PSNI. We consider it reasonable in its attempt to minimise the health risk to people attending the funeral. It takes account of the anticipated numbers and provides specific detail about the route of the cortège.

## **A timeline of events before the funeral**

### **21 June 2020**

Mr Storey died in England, aged 64. His death was widely reported in the media.

### **25 June 2020**

The body of Mr Storey returned to Belfast.

### **26 June 2020**

People lined streets in West Belfast as Mr Storey’s body was brought home in preparation for his funeral. During the evening, it was reported that large crowds were gathering near the family home. Around 5.45pm, it was reported that the crowds were increasing, estimated to be over 400 people. Stewards were nearby.

We were told that the weekend Gold Commander hadn’t anticipated such large numbers. We understand that the PSNI contacted Mr Kelly and he told them that the stewards would disperse the crowd.

A short time later, the Silver Commander requested air support to monitor the crowds. The Gold Commander declined because it could cause disorder, which was at odds

with the Gold Strategy. Despite possible breaches of the Regulations, in line with their strategy, the PSNI took a sensitive approach. They also considered human rights in their decision-making and concluded it wasn't proportionate to take enforcement action. Because officers were greatly outnumbered, they were told to monitor crowds from a safe distance.

Soon after 8.00pm, the streets were clear. Small numbers were reported coming and going from the family home.

### **27 June 2020**

Throughout the day, NPTs observed the area close to the family home. People were still coming and going as would be expected for a wake. Two stewards were managing the attendees.

### **30 June 2020, the day of Mr Storey's funeral**

The policing for Mr Storey's funeral was outlined in an [operation order](#). This provides details of police plans to officers deployed to an event. We reviewed it and found it to be a standard format consistent with operational orders for similar events, following the College of Policing's [National Decision Model](#). The document was accompanied by photographs showing premises significant to the day's events. The order included a section on police use of 'Engage, Explain, and Encourage'. But there was no mention of 'Enforcement'.

The Regulations that applied on the day of the funeral were complex. They had changed at 11.00pm on 29 June.

Hundreds of people turned out for Mr Storey's funeral, including numerous Sinn Féin members. The attendees included:

- the deputy First Minister of Northern Ireland and Sinn Féin vice-president, Michelle O'Neill MLA;
- the Sinn Féin president and Leader of the Opposition in Ireland, Mary Lou McDonald Teachta Dála;
- a former Sinn Féin president, Gerry Adams;
- the Finance Minister, Conor Murphy MLA; and
- member of the Northern Ireland Policing Board, Gerry Kelly MLA.

A YouTube channel in the name of Sinn Féin contains [a video of the funeral of Bobby Storey](#). This video and photographs of the funeral procession in the media, showing stewards and members of the public, indicated how many people attended.

As planned, the Gold Commander had returned from leave and was updated by the Silver Commander. They agreed that there was no need to change the Silver Tactical Plan.

EGTs were deployed. We spoke to the EGT sergeant, who had been in a marked police vehicle equipped to video the funeral with a camera on the roof. This is used at most large events. The camera beams images to the police control room.

We were told that the EGT officers were reminded of the Regulations and the Human Rights Act, but there is no record of this. And, because there was confusion about what Regulations applied at this time, it isn't clear what officers were told.

The officers were directed to monitor the funeral with a view to dealing with any offences later. They parked the video vehicle to film at different places at different times of the day. They kept a respectful distance, complying with the Gold Strategy and Silver Tactical Plan. We have reviewed some footage. What we saw was taken from too great a distance to identify individuals. But the PSNI told us that in some footage people were identifiable.

We examined the police incident log and highlight the following stages of the funeral, as follows:

#### *1. Cortège from the Storey family home to St Agnes's Church*

At around 10.00am, as the cortège made its way from the Storey family home to St Agnes's Church, there were an estimated 400 to 500 people on the pavement with more arriving. There were 15 stewards outside St Agnes's Church.

By 10.30am, numbers around St Agnes's Church had grown to around 1,000. Within 10 minutes, the crowds gathered outside the church had increased by a further 500.

At 10.40am, three black taxis led a procession from the Storey family home with a piper playing and an Irish tricolour flag draped over the coffin. There was an estimated gathering of 2,000 people.

#### *2. Funeral service at St Agnes's Church*

This was a religious service in the form of a Mass.

At 10.48am, the cortège arrived at St Agnes's Church and the coffin was taken inside. During the service, socially distanced mourners lined the route along Milltown and Kennedy Way.

#### *3. Cortège from St Agnes's Church to Milltown Cemetery*

Hundreds of people followed the cortège to Milltown Cemetery, about one mile away.

#### *4. Ceremony at Milltown Cemetery*

Speeches were made at Milltown Cemetery. At 2.21pm, people started dispersing from the cemetery. The hearse and well-known dignitaries left the cemetery at 3.04pm.

#### *5. Cremation ceremony at Roselawn Cemetery and Crematorium*

At 3.30pm, the hearse arrived at the Roselawn Crematorium. Soon after, the PSNI ended its policing of the funeral.

## Reaction to the funeral

### The PSNI

The Gold and Silver Commanders watched the funeral unfold. The Gold Commander told us it was clear that the stewarding wasn't working as anticipated. As the cortège travelled between St Agnes's Church and Milltown Cemetery, an unexpected long procession formed behind. But it didn't prompt the PSNI to change its Gold Strategy. The Gold Commander told us that, on reflection, they had "no idea" what they could have done differently.

The Silver Commander told us they wouldn't have done anything differently.

We spoke to the Bronze Commanders for community engagement and public order. Both have long experience of policing in Belfast. Independently, they told us that they were surprised that so few people turned up.

The public order Bronze Commander explained that the policing approach was respectful and sensitive. They told us that they wouldn't have interfered with the funeral unless there was a serious incident with immediate risk to life.

The [public order public safety adviser](#) (POPSA; previously known as a public order tactical adviser) to the Silver Commander told us that the PSNI would only have intervened on the day in extreme circumstances. Any intervention would have created significant risks of violence, public disorder and damage to community relations.

The PSNI action on the day was limited to managing traffic and monitoring the funeral. But officers were available to gather evidence if needed.

The POPSA described the operation on the day as a success from a public order perspective and said that it had gone "exactly as planned".

We spoke to an experienced police inspector who had worked in the community in different roles for many years. Their role was to monitor the funeral and community feeling, and report back to the Silver Commander. They patrolled the periphery of the funeral and found that people lining the route were socially distanced.

The inspector was in a vehicle that didn't stop at any time. They told us that stopping may have been interpreted as provocative and likely to generate a hostile response from mourners. There was a sense that the police were being tolerated.

The inspector stated:

"I knew it was the sort of gathering that any attempt on my part to stop and engage would not have gone down well. I was getting a clear picture from the steely looks I was getting".

They explained that it was a tense situation. It wasn't one where police officers would engage with mourners to encourage and explain that they needed to comply with the Regulations.

We were told that, in their opinion, any engagement would have led to disorder. This would have had substantial and long-term consequences for the PSNI relationship with the community.

### **The public and politicians**

The funeral of Mr Storey sparked strong public condemnation and a political furore after hundreds of people lined the streets of west Belfast. This apparent disregard of the Regulations triggered furious reactions, on which the media reported.

One DUP MP was reported as saying:

“With hundreds of people gathered for the IRA [Irish Republican Army] man’s funeral on Tuesday, it will have felt like a kick in the teeth for the many families who over recent weeks have gone to considerable lengths to discourage people from attending their loved one’s funeral.

The scenes in west Belfast showed no respect for the COVID-19 restrictions. The presence of senior Sinn Féin personnel such as deputy First Minister Michelle O’Neill and others will lead many to conclude it is ‘do as I say not as I do’. Police action needs to follow and be seen to take effect.”

Gerry Kelly MLA was quoted as saying that the Regulations around funerals had changed, and that only 30 people were in the cortège.

Mr Kelly said that:

“If police had stepped into the middle of the funeral, it may have turned into a more difficult situation with many more people ending up there.

There were over 1,200 men and women dressed in white and black out there so that the crowd would not go on into the route of the cortège.

It was an impossible job to stop people going to a funeral where someone was so highly respected.

We have to take a sensible approach in trying to make sure that the least harm is done in the circumstances that you are presented with.”

The PSNI stated that officers had assurances that the Regulations would be observed and that stewards would make sure people complied.

The PSNI received many complaints from the public, including from bereaved people who were saddened that they had buried loved ones with only a few mourners present. They perceived considerable unfairness that they had abided by rules that appeared not to apply to Mr Storey’s funeral.

The appearance of deputy First Minister Michelle O’Neill MLA among the crowds led to what was described as “...[ructions at the top of the Stormont Executive](#)”.

There were calls from some politicians for the deputy First Minister Michelle O’Neill MLA to resign over her attendance. She responded that the funeral cortège was limited to 30 people and that social distancing inside the church was exemplary. She said: “I will never apologise for attending the funeral of my friend”.

Several MPs wrote to the PSNI Chief Constable straight after the funeral. They asked what the PSNI was going to do about breaches of the Regulations at the funeral. Many referred to the deputy First Minister.

One MP asked:

- Why there was no evidence of PSNI presence at the funeral?
- Was any attempt made to intervene to limit crowds gathering?

Another MP commented on publicly available photographic evidence of people breaching the Regulations. They wanted to know about enforcement steps, because “the public expect the law to be applied equally across all circumstances regardless of the status of those that partake in the action”.

# Investigation into breaches of the Regulations

## The initial investigation

The Gold Commander told us that from the moment the Police Service of Northern Ireland (PSNI) knew of the funeral the service expected to investigate breaches of the Regulations.

On 30 June 2020, the day of the funeral, a detective inspector (DI) started gathering information for an investigation. Following the PSNI funeral investigation strategy, the DI prepared an investigation plan.

The Gold Commander discussed the investigation with the Chief Constable and the Deputy Chief Constable of the PSNI. On 2 July, a detective superintendent (D/Supt) was appointed as senior investigating officer.

We were told that the PSNI has investigated a lot of funerals held during the pandemic. We heard that it considers how proportional an investigation of potential breaches of the Regulations is. For instance, it doesn't release photographs to the media appealing for information to identify those present. That said, identification wasn't difficult in this instance because many who attended the funeral were well known.

The D/Supt worked with the DI, who had already taken initial investigative steps by identifying some relevant social media material. They established a team of detectives for the investigation: a DI, a detective sergeant (DS) and eight detective constables (DCs).

The Criminal Investigation Department (CID) was already managing other major cases, but the PSNI recognised the importance of investigating Mr Storey's funeral. Senior detectives monitored the progress during daily CID meetings. The Assistant Chief Constable (ACC) with responsibility for the CID was updated when needed.

During the initial investigation, the DI recorded the main decisions in a decision log, which we have read. There are 22 entries, all numbered and dated.

The first entry, dated 3 July 2020, sets out the focus of the investigation: "possible breaches of current public health regulations".

The second entry, on the same date, stated that the PSNI would create a criminal justice strategy to help identify people who breached the Regulations at the funeral.

We have seen the criminal justice strategy that directed the investigation. It included an overview of events and an interpretation of the Regulations at the time. It also set out a three-phase investigation:

- Phase 1 – a review and evidential capture of any relevant material which may assist in the identification of prominent or public figures.
- Phase 2 – a review and evidential capture of any relevant material which may assist in the identification of event organisers.
- Phase 3 – a review of any relevant material which may assist in the identification of other persons.

Much of the PSNI investigation relied on video recordings. But, on 9 July 2020, the DI recorded: “There is no available EGT footage”. This suggests that the EGTs hadn’t recorded any footage on the day, which was incorrect. One of the teams had recorded and submitted 29 items.

The DI had in fact considered the footage but decided it wasn’t significant evidence because of the distance from which it was recorded. We think the policy file entry was misleading. As a result of this entry, the footage was overlooked in both the initial and later investigations.

An entry in the policy file dated 14 July 2020 recorded that the Chief Constable had decided to appoint a senior officer from a police force in England to independently oversee the investigation. This is discussed in more detail in the next section of our report (Decision to appoint an independent officer).

The DI recognised the need to continue collating valuable evidence before the independent officer arrived, so they directed that any relevant material not yet obtained should be secured. Without EGT footage, they looked primarily to material available on social media. They didn’t discount that there may be recordings from static CCTV cameras.

When the PSNI examined the material on social media, the service found evidence of potential breaches of the Regulations. It also saw potential evidence of firearms offences.

We viewed a collage of five photographs. Three photographs show a different man, holding what looks like the same firearm, in the same unidentified house. Each man was dressed in black trousers, white shirt and black tie.

The photographs got public attention when The Sunday World Newspaper printed one of them on 4 July 2020. They are still being considered in a separate PSNI investigation. We discuss this later in this report (The independent officer’s investigation).

## Decision to appoint an independent officer

Early in the initial investigation, the Chief Constable decided that an independent perspective was needed. This was because some members of the NIPB, to which he was answerable, attended the funeral and were likely to be investigated.

The Chief Constable arranged through the National Police Chiefs' Council (NPCC) to appoint a senior officer from outside the PSNI to lead the investigation. A DCC from a police force in England was first contacted on 10 July 2020. After talking to this DCC, the Chief Constable drafted terms of reference.

At the time, there was public emotion and some concern that the PSNI had “colluded” with the funeral’s organisers. Although the alleged breaches of the Regulations didn’t involve serious crime, they had a large impact. It was alleged by some that *law-makers* had become *law-breakers*.

The Chief Constable and the independent DCC discussed the terms of reference. They delegated authority for the DCC to investigate potential breaches of the Regulations and any offences under the Private Security Industry Act 2001. The DCC was also asked to consider potential firearms offences. This was included as part of the independent investigation.

Importantly, the DCC would be responsible for the investigation. The terms of reference made clear that the Chief Constable was to be regularly updated but wouldn’t interfere in the investigation.

We interviewed the DCC. He considered his meetings with the Chief Constable “entirely legitimate”. He felt they allowed the Chief Constable, and his chief officer team, to assess and manage the consequences of the investigation. Records were kept of relevant issues discussed. The DCC told us he “never felt any tension or compromise, and at no point felt the Chief Constable was seeking to influence the investigation”.

The terms of reference also considered issues of proportionality and the boundaries for the investigation. They didn’t focus on the PSNI’s planning for the funeral. The PSNI retained responsibility for media communications.

The terms of reference made clear that the PSNI expected the Public Prosecution Service (PPS) to be consulted early on. The service agreed that, if a public interest test was to be applied, it was better that the PPS do it. The terms of reference said that the DCC would lead a team of PSNI investigators. He wasn’t offered the option of bringing in his own team. He told us that officers from another force wouldn’t fully understand the context of the matters under consideration.

The DCC told us that the investigation was urgent because the PSNI was continuing to police wakes and funerals. To meet the timescales, the investigation had to be proportionate in line with the three phases of the criminal justice strategy. On 3 September 2020, the DCC accepted and signed the terms of reference.

## The independent officer's investigation

The DCC visited Belfast on 22 July 2020 (before his terms of reference were agreed) and conducted site visits with the D/Supt. The original investigation team was still in place and making enquiries. But, after a meeting with the PPS on 14 August 2020, the team was replaced (except for one DC to give continuity). This was to exclude, as far as possible, anyone involved in policing Mr Storey's funeral or planning the PSNI operation from being part of the investigation team.

The new investigation team comprised the DCC, the D/Supt, a detective chief inspector (DCI), a DI (who replaced the original DI), a DS as investigation lead and file preparer, and two DCs.

The DS and two DCs conducted the day-to-day investigation. The more senior officers weren't dedicated solely to the investigation but provided oversight and direction. But the team was not all in place and did not meet for a briefing until 8 September 2020.

In our view, the inclusion of one DC from the initial investigation did not compromise the independent investigation.

In accordance with his terms of reference, the DCC considered potential offences under the Regulations, and [section 44 of the Serious Crime Act 2007](#) (intentionally encouraging or assisting an offence). The investigation team did not consider the Serious Crime Act appropriate in these circumstances, primarily because it would be difficult to prove the necessary intent but also because the offences that would have been encouraged did not amount to serious crime.

We obtained legal opinion on this matter. It advised that organisers could conceivably commit an offence under section 44 of the Serious Crime Act 2007. However, that offence was designed for serious crimes rather than summary offences, such as those under the Regulations. So it may have appeared heavy-handed to pursue offences under that Act. We understand that the PPS held similar views.

The DCC told us that the investigation was logistically complex because of the large numbers of people who attended Mr Storey's funeral. He re-assessed the parameters for the investigation and issues of proportionality.

The DCC decided to apply a series of tests before taking action against any individual. In the first instance, he considered the impact when those who make, design and impose the law might subsequently be suspected of breaking it. Further tests considered the scale of any possible breach, whether there was clear evidence, and whether there were any aggravating factors.

He felt that "it would be wildly disproportionate (and logistically impossible) to pursue all attendees". With that in mind, he developed a strategy as to how suspects would be dealt with, including the categorisation of those who might have committed offences. He believed this would address public concern that those involved in creating the Regulations and encouraging compliance with them were potentially in breach of them. He considered that a failure to pursue this issue could lead to widespread disregard of the Regulations. This could potentially raise infection rates.

Those suspected of committing offences were grouped into four categories, according to their role and whether there was sufficient evidence of breaches. The DCC then defined a proportionate outcome, “balancing the PSNI’s obligation to investigate crime with their overall purpose of keeping people safe”.

The four categories were as follows:

- Category one: elected representatives in the Northern Ireland or any United Kingdom jurisdiction;
- Category two: elected representatives from any other jurisdiction;
- Category three: prominent community figures from any jurisdiction; and
- Category four: any other persons.

In assessing whether there was sufficient evidence to justify further action, the primary question was whether there was “a clear and strong prima facie case of the breach of the regulations”. Any potential breaches were assessed in terms of whether they related to attendance at the funeral, at gatherings outside or both.

Each category had its own action:

- Category one: included in the file of evidence submitted to the PPS;
- Category two: included in a letter to the Irish Parliament advising them of potential breaches;
- Category three: sent a letter offering suitable advice; and
- Category four: no further action.

We sought legal opinion about the suspect strategy and the categorisation of individuals. Given the general principle that everyone is equal before the law, the prioritisation of individuals was unconventional and surprising. However, breaches of the Regulations by prominent figures could damage the public health message and encourage further non-compliance.

In these exceptional circumstances, therefore, it may have been appropriate to prioritise enforcement action against prominent figures. And it would not necessarily be unlawful or irrational for the PPS to consider these matters as part of the “public interest”.

The new investigation team gathered evidence to supplement that of the original team. In doing so, they too overlooked the EGT footage. This was because of the inaccurate policy file entry that we discussed earlier (The initial investigation). It is unlikely that the footage would have affected the result of the investigation. But this is a further example of the poor record keeping we found during our inspection.

The investigation team only became aware of the EGT’s footage after the PPS had announced its decision about this case. It was found to be of little, if any, evidential value. The recordings captured from a distance didn’t provide evidence of the personal involvement of individuals. Similarly, body-worn video cameras, with which some officers were equipped on the day of the funeral, didn’t provide anything of value.

A possible explanation for the lack of police video evidence lies in various planning documents that the investigation team considered. They indicated that the funeral was always likely to be “massive”, but it was clear to the DCC that “the PSNI took a very sensitive, distant approach”.

As an alternative, the investigation team relied on evidence from recordings published on social media sites. Consequently, most of the footage provided to the PPS came from Sinn Féin’s own video of the funeral. Sinn Féin’s recordings were of a high quality and captured from a close range.

But we noted that investigators did not interview or obtain written statements from officers who were deployed on the day. They might have been able to provide accounts of value. We consider this an omission.

Even so, the investigators were able to estimate how many people were at the various locations connected with the funeral. They created the suspect strategy we refer to earlier. In accordance with that strategy, they aimed to “assess evidence and define a proportionate outcome”.

The PSNI case was almost entirely dependent on material produced by others and taken from social media sites. Other lines of enquiry that would often be considered in an investigation, such as house-to-house and media appeals, were not pursued. They were not considered proportionate and it was thought that they were unlikely to provide further value. In any event, the funeral had already received considerable media coverage.

An initial investigation into the firearms photographs we referred to earlier (The initial investigation) was closed on 9 September 2020. It concluded that the ‘firearms’ were likely to be imitations and that the men concerned had not been identified. The DCC was not satisfied with the extent of the original investigation into the firearms offences and directed that further enquiries should be made. The PSNI re-opened the investigation on 5 February 2021 and this has not yet concluded.

The DCC and his team also considered offences under The Private Security Industry Act 2001.

This Act regulates how private security arrangements should operate. The PSNI received allegations that security and stewarding arrangements for the funeral were sub-contracted to unknown third parties, with no public liability insurance or security licences.

Again, potential offences under this Act are still being considered.

In accordance with the terms of reference, the DCC considered events at Roselawn Cemetery and Crematorium.

Belfast City councillors also decided that there should be an independent investigation into events at the crematorium on the day of the funeral. It followed complaints that arrangements for Mr Storey’s cremation were markedly different from those in place for eight other cremations that day.

## Consultation with the Public Prosecution Service (PPS)

In planning for large-scale public events, the police often consult other organisations. When it involves the policing of an event where it is likely that offences might be committed, police must consider enforcement. So they may consult the PPS during the planning stage to discuss what evidence might be needed.

In this instance, the police did not consult the PPS before the funeral. But prosecutors had advised before about gatherings during the pandemic. The PSNI Public Order and Criminal Justice Strategy quotes PPS advice from 5 June 2020, relating to gatherings for protests. Although the advice did not specifically refer to funerals, it is worthy of inclusion here:

“The sensitivity of the matters under consideration [presumably protests and demonstrations] need hardly be stated. There will undoubtedly be broader operational considerations for PSNI, quite apart from the issue of whether the Test for Prosecution could potentially be met, that will weigh heavily in any decision as to how this matter should be approached from a policing perspective.”

There is no doubt that Mr Storey’s funeral was a highly sensitive event, and the PSNI policed it as such. The service was acutely aware of what could happen if it got it wrong.

The PSNI first contacted the PPS about the funeral on 1 July 2020, which was the day after the funeral. The PSNI was considering potential breaches of the Regulations. The PPS asked for copies of policy documents and records of contact with the organisers. But, at that stage, they did not provide any written advice.

The DCC told us that he and his team had a good working relationship with the PPS throughout his investigation. He met with the PPS on 14 August 2020. We have seen police notes of the meeting. Lawyers raised an issue that was to prove significant. This related to the PSNI planning and engagement with organisers before the funeral. The lawyers were concerned about the PSNI application of the 4Es approach to policing. They thought that it might not have adequately covered the consequences of breaching the Regulations. And it might not have encouraged compliance.

The notes show that the scope of the investigation was also discussed. The PPS recommended that the planning phase of the police operation be included in the investigation. Consequently, the PPS also recommended that those who had been involved in planning the police operation should not take part in the investigation. This would ensure that the investigation was independent of those who took part in the planning process.

The ACC responsible for the CID received the notes of the meeting. The DCC also told the Chief Constable about the issues raised.

Despite this, the terms of reference for the investigation (which had not yet been finalised) were not amended to include the planning phase. The investigation team was changed, however.

The police took the view that material about planning for the funeral should be provided to the PPS as unused material (that is, material that did not form part of the prosecution case).

We acknowledge that, as he told us, the DCC's area of expertise is in criminal investigations rather than in event planning and public order policing. We feel that the terms of reference should have been expanded. We consider that it would have been worthwhile even if it necessitated the involvement of a further independent officer with the relevant experience. As it was, an important aspect, which was highlighted at an early stage by the PPS, was not investigated.

The police also discussed with the PPS the suspect strategy that they intended to implement. The PPS agreed that the categorisation of individuals would be a suitable way to proceed.

But the PPS recognised that issues relating to public interest and the 4Es were not the only challenges facing the investigation team. They foresaw that confusion about the Regulations that applied on the day of the funeral could create difficulties.

To address the matter of pre-engagement, the police subsequently provided the PPS with:

- relevant extracts from the College of Policing's [Authorised Professional Practice public order](#);
- the PSNI code of ethics; and
- details of legal cases involving a police duty to engage.

Interestingly, a senior PSNI investigator told us he didn't consider that the police engagement was any greater than he would expect for large events. Indeed, in his opinion, some events commanded much greater engagement. He commented: "It's been a well-trawled path for years. We didn't see this would be an issue." But we feel that the problem here is not so much about police engagement: it is the nature of that engagement, and an apparent failure to apply the 4Es approach.

Conversations between the investigation team and the PPS continued. But, as the police drew together evidence for consideration, further problems emerged. Senior investigators from the PSNI told us that the PPS advised the investigation team that the Regulations provided certain exemptions for funerals. They also said the PPS advised that the ceremony alone constituted a funeral for the purposes of the Regulations. In this case, there was little evidential material relating to the ceremony at St Agnes's Church.

The issue of possible sanctions was also problematic. A PSNI website entry about the Regulations spoke of fixed penalty notices and community resolution notices as means of enforcement. Essentially, the police did not want to unnecessarily criminalise individuals.

The investigation team felt that in this case informal disposal – such as fixed penalty or community resolution notices – may have been an attractive and expedient option. We saw a handwritten police record of a telephone conversation between the DCC and the PPS about the viability of issuing fixed penalty notices. The PPS advised that this course of action would avoid the "public interest test" (in cases where there is

sufficient evidence to provide a reasonable prospect of conviction, the prosecutor must decide if a prosecution is required in the public interest), so may not be possible.

When we spoke with PPS lawyers, they provided further explanation as to why they considered fixed penalty notices inappropriate. It fell into three categories:

- the public interest test (when it was being alleged that law-makers had broken the law);
- the role of the police before the funeral (that is, pre-engagement); and
- confusion about the Regulations.

The PPS also felt that suspects should have an opportunity to give an account of their actions in interview before the police submitted a file.

## **The suspect interviews**

As the investigation progressed, the DCC and his team identified 24 individuals in category one status under their suspect strategy (that is, elected representatives in Northern Ireland or any United Kingdom jurisdiction). They had already discussed with the PPS their intention to interview those individuals and, on 17 September 2020, sent letters to those concerned. The letters were signed by the investigation team's DS, having been approved by the DCC and the PSNI Legal Services Department.

The subsequent interviews did not progress as quickly as the DCC and his team had anticipated. The pandemic caused practical problems, which were overcome by conducting interviews remotely. But there were problems with legal matters and the interpretation of the Regulations.

The 3 solicitors representing the 24 individuals responded promptly to the letters on behalf of their clients. But 1, who represented 22 of them, was concerned about the PSNI proposed course of action. The solicitor told the PSNI that the action contradicted the statement on its website that it did not want to criminalise people over breaches of the Regulations. The solicitor contended that, when investigating previous events where there had been potential breaches, there had been no requirement for interviews. Furthermore, the PSNI website suggested that advice and guidance or a community resolution notice were appropriate means of disposal.

The DCC responded to the solicitor's concerns:

"All of those invited for interviews are elected representatives, and significant public concern was raised as to their actions. There appears to be a clear public interest in the public impact of their actions at the events associated with Mr Storey's funeral. Such is the level of public interest that it is appropriate that independent examination of both the evidential and public interest tests is carried out. In these circumstances, I believe that the Public Prosecution Service is the appropriate authority to perform this function."

The investigation team was anxious to complete the interview process and told us that they provided the solicitors with over 200 possible interview appointments. Agreement was eventually reached about the interview times. During a meeting between the police and defence solicitors on 8 October 2020, the police provided details of the evidence against each of those concerned.

The DI and DS from the investigation team conducted all the interviews. The first interview took place on 25 November 2020. There was then an interval before the second interview while the police and solicitors considered a legal issue that had arisen relating to the definition of a funeral. Eventually, the interviews recommenced and were all completed by 15 December 2020. All those interviewed provided prepared statements explaining their involvement. Many of them alleged that the police had never made them aware – either before or during the funeral – that their actions amounted to a breach of the Regulations.

## **File submission**

On 16 December 2020, the D/Supt held a meeting with the DCI, DI and DS. He instructed the DS to submit an evidential file within two days (that is, by 18 December 2020) to the PPS for consideration. This caused some logistical problems because the file had to include typed transcripts of all the interviews. Nevertheless, the file was delivered on time, which was within three days of the final interview.

We noted that the file was prepared by the investigation team's DS, who undoubtedly played a significant role throughout the investigation. Senior officers spoke highly of the DS's ability and commitment. When we met and interviewed the DS, we were similarly impressed.

# The PPS decisions on prosecution

## The PPS public statements

On 30 March 2021, having considered the files of evidence submitted by the Police Service of Northern Ireland (PSNI), the Public Prosecution Service (PPS) [published its prosecution decisions](#). These related to 33 people reported for potential breaches of the Regulations in connection with attendance at four different funerals. These funerals occurred on different dates on which different versions of the Regulations were applicable. In relation to the 24 individuals reported in connection with Mr Storey's funeral, the decision was not to prosecute.

The PPS decision was the subject of an accompanying [online public statement](#). The PPS reported that it had taken decisions in these cases by independently and impartially applying the test for prosecution. The statement explained the process for deciding whether the Evidential Test for Prosecution is met. This involves an exercise of informed judgment as to how a particular case would be likely to fare in a criminal trial. It requires an assessment of the strength, by the end of the trial, of the evidence against the defendant and of the likely defences.

The PPS statement outlined the confusing nature of the Regulations:

“...on the 30 June [2020] Regulations had become extremely difficult to navigate and, in certain respects, inconsistent.”

The PPS commented on the evidence presented to it about how the PSNI had engaged with event organisers before the funeral. The PPS considered that the main funeral event comprised five stages. We believe this is an important point. The Regulations create different considerations and reasonable excuses that could pertain to different parts of a funeral event. As we outlined earlier (Summary of applicable provisions concerning funerals as at 30 June 2020), a funeral is not defined within the Regulations. It is a finely balanced legal argument to differentiate between the stages of the funeral:

- A cortège to St Agnes's Church.
- A funeral service (a religious service in the form of a Mass) at St Agnes's Church.
- A cortège from St Agnes's Church to Milltown Cemetery.
- A funeral ceremony at Milltown Cemetery.
- A cremation ceremony at Roselawn Cemetery and Crematorium.

The PPS explained that most of the 24 individuals had participated in one or more of these five stages of the funeral. The conclusion reached by the PPS was that:

“...whether considered alone or in combination...the lack of clarity and coherence within the Regulations; and...[the PSNI’s] prior engagement with the organisers and the policing approach on the day, would pose an insurmountable difficulty if any of the reported individuals were prosecuted.”

The PPS analysis was that “each of the reported individuals would be able to use the defence of ‘reasonable excuse’” to attend the funeral. The PPS concluded that there was no reasonable prospect of conviction in respect of any of the reported individuals. The Evidential Test for Prosecution was therefore not met.

On 31 March 2021, the PPS issued a [further public statement](#). The Director of Public Prosecutions (DPP) reported that the PPS had received several requests to review the decisions.

The PPS decision led to a political and public furore, and intense media commentary and scrutiny of the PSNI’s actions.

### **The Director of Public Prosecution’s explanation of the decision**

During the course of our inspection, the PPS helpfully provided us with additional information. This was over and above that which it had included within its public statement. We have also interviewed the DPP and other senior PPS lawyers.

The PPS told us that its review of its prosecution decision would not be completed by the time we reported our findings. The service provided the additional information to our inspection because it would inform future organisational learning.

The PPS explained that its outline of police engagement within its public statement:

“...was not intended to constitute a report, findings or indeed criticism of police conduct, as some have interpreted it.”

The PPS added:

“It is not our role to make judgments on difficult policing decisions; rather, our role is to carefully consider the evidence and assess how any potential prosecution is likely to fair in the context of the adversarial criminal process. Therefore, the purpose of outlining the police engagement within the public statement was to provide sufficient information to assist the public in understanding how we had reached decisions in this case; and in particular how, in our view, the policing approach supported a potential defence of reasonable excuse”.

### **The PPS decision in relation to the PSNI’s approach to engagement**

The PPS told us that there was no evidence that the PSNI, during its engagement in respect of the funeral, had provided any unequivocal representation that no prosecution would follow. We took this to mean that the PSNI had not made promises that attendees at the funeral would not be prosecuted.

The PPS reiterated its considered opinion: that police actions would not form the basis for a successful “abuse of process” argument. The service also confirmed that it had no cause to make any referral to the Police Ombudsman under [section 55\(4A\) of the Police \(Northern Ireland\) Act 1988](#). Such referral would have been necessary if it had appeared that officers had committed criminal offences or engaged in any action that would require disciplinary proceedings.

But the PPS highlighted to us the impact and legal effect of the nature of the PSNI’s “engagement” with organisers prior to the funeral. In summary, the PPS felt that the PSNI did not provide evidence that it had specifically warned the event organisers of potential or likely breaches of the Regulations before the funeral. And the PSNI did not raise any specific concerns on the day. The PPS also referred us to the PSNI earlier decision not to enforce the Regulations when 400 people gathered outside the Storey family home on 26 June 2020. The PPS noted the PSNI willingness to work through the organisers’ plan for the funeral to understand the safety arrangements in place. The PPS analysed the combined effect of these actions. It concluded that the event organisers and attendees could successfully have argued that the PSNI actions reinforced their view that they were acting in compliance with the Regulations.

The PPS also shared with us three prepared statements suspects had provided to the PSNI investigators. In the statements, these very issues were raised. In each case, the statements refer to engagement between the funeral organisers and the PSNI. The suspects stated that they were never informed by the PSNI that the event was not, or would not be, compliant with the Regulations. One of those statements explained that, on the day of the funeral:

“...the demeanour, presence and lack of engagement of the police with anyone in attendance reaffirmed my view that my behaviour was appropriate and lawful.”

The PPS pointed out that there was an absence of any PSNI contemporaneous records of meetings with organisers. The PPS viewed this as an obvious weakness in terms of the prosecution not being able to show exactly what had been said. There was no record of, or material supporting, any police challenge to anticipated breaches of the Regulations in unequivocal terms. This included a lack of any challenge to the intentions as recorded within the organisers’ written plan, which they showed the PSNI in advance. Had such a challenge been made, it would have given those organising the funeral the chance to revise their plans.

In the view of the PPS, the nature of the PSNI engagement provided scope for the reported individuals to raise the perceived lack of police objection in their defence. They pointed to an apparent lack of “explain and encourage” in the approach adopted by the PSNI.

In our view, and in fairness to the PSNI, it is worthy of note that the national police service 4Es guidance focuses on explaining the health protection and public safety messages. It does not guide officers to explain the law or breaches of the Regulations. The national police guidance states, in terms of the “Explain” stage of the 4Es:

“Officers will explain the risks to public health, and to the NHS in line with government guidance.”

However, we do not view this very broad approach to “explaining” as meaning that the police are not expected to go further. We think that it also includes explaining what specific types of conduct may constitute non-compliance. This more focused type of “explaining” is surely implicit in the next stage, “Encourage”, which envisages that “officers will encourage voluntary compliance”. Logically, an officer can only encourage compliance by first identifying and communicating what conduct is, or may constitute, non-compliance. This is reinforced by the fact that the next and final stage, “Enforce”, envisages the officer on the ground directing people to go home or issuing fines. Again, this assumes that the officer must have taken a view on what constitutes non-compliance.

Our examination of documents supplied by the PSNI showed that its focus in relation to policing the funeral, rather than being on the 4Es, was:

- to maintain public order and keep people safe;
- the orderly flow of traffic; and
- working with event organisers to minimise transmission of COVID-19.

There was less focus on enforcing the Regulations either on the day of the funeral or after. Planning documents showed that any enforcement was only to be considered in consultation with the Silver Commander. The Silver Commander’s Tactical Plan stated that “minor” breaches of the Regulations would be an acceptable outcome. It did not elaborate on what breaches would be regarded as “minor”.

At paragraph 21 of its public statement, the PPS stated:

“Whilst it was anticipated that, in the event of prosecution, an abuse of process application would be made, it was considered that this would be unlikely to succeed. A court can grant a stay of criminal proceedings if it considers that there has been an unequivocal representation by those with the conduct of the investigation (or prosecution) that the defendant will not be prosecuted and the defendant has acted on the representation to his detriment. The application in this case would have been based upon an allegation that police facilitated the funeral taking place in the manner that it did and that, in those circumstances, it would now be unfair for criminal proceedings to be commenced. However, it was considered that there was no evidence that PSNI had provided an “unequivocal representation” that no prosecution for breaches of the Regulations would follow Mr Storey’s funeral. It was further considered that any issues in relation to the policing of the funeral could have been addressed by the court when considering the application of the defence of reasonable excuse...”

In considering the PPS statement above, it is important to also reflect on the views expressed by the Gold Commander on 3 July 2020 in a PSNI public statement (the day after a NIPB meeting). He clarified the PSNI position as follows:

“I also confirmed to the Northern Ireland Policing Board that the police service had, in line with long established good practice and in common with many other circumstances, engaged with the organisers on the basis of no promises and no surprises, in order that they understood their obligations and to seek assurances in respect of public safety. To be clear, PSNI were not involved in the planning of this funeral and did not approve any plan for the funeral.

Accordingly we were made aware of the plans for Tuesday's funeral and local officers engaged with the celebrant and service organisers to highlight both the public health advice and risks around Covid-19, and the requirement for those attending to adhere to social distancing.

We had assurances that those attending would observe the health guidelines and that marshals would be in place to encourage those lining the cortège route to observe social distancing. During the funeral, Police implemented a temporary road closure for a short time due to public safety concerns.”

We interpret the PPS statement as not being critical of the PSNI decision to engage with organisers. But we agree with the PPS conclusion that prosecution would be difficult when the police knew the detailed plans for the funeral event but did not take steps to warn organisers of potential breaches. This includes their involvement in the planning and facilitation of the funeral (for example, traffic management).

## **The PPS decision in relation to the lack of clarity within the Regulations**

The PPS noted the difficulties that the PSNI faced in seeking to understand the frequently changing Regulations. The PSNI had expressed concern, as far back as April 2020, over the applicability of the Regulations to funerals. The PPS also highlighted the tension in the Regulations at the time of the funeral. It noted that an amendment, days after the funeral, subsequently resolved one of the important ambiguities (concerning the restrictive wording in Regulation 5(2)(g)). It suggested that this should have been included by legislators in the amendment on the evening before the funeral. We have already detailed our views on the ambiguities within the Regulations in the preceding chapter.

The PPS expressed the view that the Regulations' evolving nature and lack of clarity compromised the PSNI approach. The PPS told us that, if the law had been clear and if the suspects had clearly breached the Regulations, any reasonable excuse that relied on the PSNI engagement with funeral organisers would have been weaker.

We agree with the PPS that the two factors it relied on in making its decision were interrelated. This is because the lack of clarity in the Regulations must have affected the police engagement.

We also agree with the PPS that the PSNI and its lawyers were operating in extremely challenging circumstances. As previously explained, the Regulations had been amended nine times since 28 March 2020. And the latest amendments had only been in force for a matter of hours. Senior police do not appear to have been made aware in advance of what changes to expect. According to the PPS, no Department of Health consolidated version of the Regulations was available until 23 July 2020.

It is not clear to us how police officers could be expected accurately to explain the effect of the Regulations in these circumstances. And it is not clear to us how the public could abide by Regulations that even the police and legislature themselves could not explain properly. As a practical example, we saw material showing that officers were commenting on the seating arrangements for 30 attendees at the funeral. But numbers at the church service were no longer part of the Regulations.

It is our conclusion that any prosecution would have been difficult in light of the combination of these considerations.

## **The PPS decision in relation to the lessons to learn**

The DPP told us in his letter that there are lessons to be learned in respect of the legislative process adopted for the Regulations. He identified the risks of legislation being drafted at speed and with little scrutiny. He also acknowledged the need for the law to be more transparent and accessible, not only for the public but also for the police who are expected to enforce it. Similar points have been made by other parties in this inspection and, as we have already stated, we agree.

The DPP acknowledged that the PSNI was faced with a very challenging situation. But senior prosecutors considered the prospects of conviction had been compromised in part by the policing approach to the funeral. So the DPP thought it important to consider the nature of the police engagement in order for lessons to be learned. The DPP also suggested measures that could be introduced to assist with future prosecutions:

- “Making clear (and recording) the precise purpose of any engagement between PSNI and those planning an event so as to minimise the potential for any suggestion that police have decided to acquiesce in any minor breaches of the law.
- Maintaining a detailed and comprehensive record of conversations with organisers of events. Ideally any such record should be shared with the other party (e.g. by way of follow up email) to minimise the possibility of any misunderstanding or later dispute as to what was said or agreed.

The purpose of the organiser sharing any plan, risk assessment or other document should be made clear and police, if appropriate, should explicitly state that receipt of the plan does not constitute approval of its contents. To the extent that aspects of a plan shared with police may give rise to potential criminal offences, police should make this clear, together with a reminder of the potential for enforcement in the event of breaches of the law.

Police should as far as possible, have a clear understanding of the law and the circumstances in which those participating in an event may be [sic] likely to be in breach of the law. Where the law is to be changed in the lead up to an event police should identify independent and reliable points of contact that enable them to ascertain the detail of any anticipated changes of relevance; and to quickly confirm the detail of any such changes as soon as possible after they have been enacted.”

We agree that these are sensible and pragmatic measures. If the PSNI implements them, it would help to facilitate constructive engagement with organisers of similar events without compromising potential prosecutions.

We take the view that these measures could, and arguably should, have been in place well in advance of Mr Storey’s funeral. They would have greatly assisted the PSNI overall response to the policing of the Regulations. Earlier consultation with the PPS about the proposed approach to prosecuting breaches of the Regulations would have been helpful. This is particularly the case for large gatherings such as funerals.

The PPS may have identified problems, such as those encountered at Mr Storey's funeral, sooner. This particular lesson appears to have already been learned. The PPS told us it can see that, increasingly, the PSNI are now consulting them before other similar events.

When the Regulations were first introduced, more detailed consultation between the PSNI Legal Services Department and the PPS may also have helped.

In conclusion, the way the Regulations were drafted presented the PSNI with a significant problem. The PPS and the PSNI have interpreted the 4Es national police guidance differently. But the PPS criticism of the nature of the PSNI poorly documented engagement with funeral organisers is, in our view, justified. We conclude, however, that, in light of the unclear legal position on the morning of the funeral, the PSNI faced an impossible task to conduct itself in a way that ensured breaches of the law could be successfully prosecuted.

## **Our assessment of the decision as explained in the PPS public statement**

This assessment should be read alongside our earlier analysis of the Regulations. Fundamentally, we agree with the PPS conclusion. It is likely that the 24 reported individuals would be able to avail themselves of the "reasonable excuse" defence.

We find the reasoning of the PPS persuasive. But we consider the first of the two factors on which the PPS relied to be particularly important.

As we explained in our analysis of the Regulations, as at 30 June 2020, there was no limit prescribed by Regulation 6 on the number of people who could gather in a public place for a funeral. In the absence of a statutory definition of the term "funeral", we think each of the five stages of the event would at least arguably form part of the funeral (notwithstanding that the PPS analysed each stage separately).

In relation to the list of examples of "reasonable excuses" for leaving home in Regulation 5, while "attending a funeral" was only a reasonable excuse under Regulation 5(2)(g) for a very limited category of persons, other attendees may well have been able to successfully invoke the excuses in Regulation 5(2)(ga) (attending a burial ground to pay respects, including to a friend) or Regulation 5(2)(n) (attending a religious service). Even if these excuses were not applicable, these individuals may have been able to argue that, reading Regulations 5 and 6 together, even those not covered by Regulation 5(2)(g) had a "reasonable excuse" for leaving home to participate in a funeral that was itself permissible under Regulation 6.

In this regard, a court would be likely to be strongly influenced by the fact that the tension between Regulations 5(2)(g) and 6(c) was resolved two days after the funeral, on 2 July 2020, when Regulation 5(2)(g) was amended to make clear that funerals were no longer restricted to close family or friends. This is a powerful indicator that the restrictive Regulation 5(2)(g) wording had been retained by mistake, and that the overall intention of those drafting the Regulations was to permit wider attendance at funerals, beyond these restricted classes.

We further note that, in accordance with established principles of criminal law, any doubt as to the scope of an offence would be construed in favour of the accused (the principle against doubtful penalisation).

In light of the above, we are not confident that any of the attendees could convincingly be shown to have committed an offence under the Regulations as at 30 June 2020. This is consistent with the PPS decision.

Given that conclusion, it seems to us open to question whether it was necessary for the PPS to consider the police engagement and policing on the day. It may be that the PPS considered it appropriate to add this additional strand to its reasoning, in circumstances where the decision not to prosecute would inevitably face scrutiny and perhaps even legal challenge. The anomalies within the Regulations and the “reasonable excuse” defences would, we believe, have been enough to justify the decision not to prosecute.

### **Reaction following the PPS decision**

Republican politicians reacted to the Public Prosecution Service (PPS) decision, and their public statement explanation for not prosecuting any individual, by welcoming the conclusion of the process and expressing regret at the hurt caused.

The assertion that the Police Service of Northern Ireland (PSNI) had engaged in meticulous planning for the funeral was refuted by the service.

Unionist representatives in the main reiterated suggestions of “two-tier policing” and called for the resignation of the Chief Constable. Some Unionists, in contrast, felt that the PSNI’s leadership was being scapegoated and that wider political and systemic factors were to blame.

There was public disagreement between the Northern Ireland Executive and the PSNI leadership as to whether or not the PSNI had sought to identify flaws in the legislation.

### **30 March 2021**

*BBC News published an article on its Northern Ireland page entitled [‘Bobby Storey funeral: How the police investigation unfolded’](#)*

The article carried a picture of the funeral procession, stating that at that time regulations permitted up to 30 people “in a cortège and at a funeral service”. What followed was a chronology of what it identified as key junctures, including the following:

- 30 June 2020 – a PSNI statement confirmed engagement with organisers. It said that the police had received assurances about compliance with health guidelines. And that Sinn Féin stewards would be in place to encourage compliance.
- 2 July 2020 – Mary Lou McDonald quoted as telling RTÉ that the funeral had been “meticulously planned with the PSNI and others”.
- 4 July 2020 – A senior PSNI officer said police had engaged with organisers so that “they understood their obligations” and insisted that officers had not been involved in planning the funeral, nor had the PSNI approved any plan.

*BBC News published a second article on its Northern Ireland page entitled: [‘Bobby Storey funeral: Arlene Foster calls on PSNI chief to resign’](#)*

The First Minister is quoted as saying that she considered the Chief Constable’s position as “untenable”, and that she had telephoned him and told him to resign. She said she regretted his decision not to, and that she would be speaking to Northern Ireland Secretary Brandon Lewis later.

*[RTÉ, reporting on the PPS decision not to prosecute Michelle O’Neill and others, quoted the First Minister as saying that the engagement between police and the funeral organisers was a factor in the decision not to prosecute](#)*

“If any senior officer is identified as having approved of or contributed to that decision-making process, then all those senior officers’ positions are untenable. The position of the Chief Constable is now untenable, and I am calling on him to resign. Sadly, it is now clear confidence cannot be rebuilt with him in post.”

### **31 March 2021**

*Under the banner headline, [‘Bobby Storey funeral: NI politicians react to PPS decision’](#), the BBC quotes Loyalist and Republican political leaders as they reacted to the decision of the PPS not to prosecute anyone in connection with Mr Storey’s funeral*

Sinn Féin President Mary Lou McDonald said it was good the process had “reached a conclusion”. The decision not to prosecute “is the decision arrived at independently by those who are charged to make these decisions”, she told Irish broadcaster RTÉ. She continued:

“I understand at the time of that funeral, that there was alarm and some hurt at the number of people that were out to pay their respects. Certainly for our part, for my part, I regret that that hurt was felt.”

Ulster Unionist Party leader Steve Aiken is quoted as calling the decision “regrettable” and:

“that in the height of the COVID pandemic Sinn Féin saw fit to very publicly and visibly flout the rules and guidelines that applied to everyone else in Northern Ireland should be of concern to us all.

Sinn Féin have clearly been allowed to get away with something that no other organisation or citizen would have been allowed to do and that has very serious implications.

Rules and the law must apply equally to everyone, or else they might as well not exist... that there is now a very distinct perception that there is two-tier policing in Northern Ireland is a matter that must be addressed”.

Alliance Party of Northern Ireland deputy leader Stephen Farry is quoted as saying:

“The onus lies with Sinn Féin to belatedly take responsibility for their actions. It undermined the entire messaging of the executive and others last year –

Michelle O'Neill needs to issue an unreserved, unambiguous public apology on the matter, and now show some leadership.”

However, Mr Farry said he did not think the PSNI Chief Constable should resign:

“There is obviously a major emotional reaction to what happened and the lack of accountability to what transpired last summer – I think the police are the wrong target in that regard. I think the focus has to be on Sinn Féin and holding them to account and demanding that they do far better in terms of recognising the hurt and damage that has been done.”

**1 April 2021**

*The [County Grand Orange Lodge of Belfast published a statement on its website](#) in which it described the Storey funeral as “effectively an orchestrated Republican show of strength”*

“The recent PPS decision signals that Republicans are above the law. In this case, they were above the law they themselves had played a central role in laying down for others to follow and obey. How can members of the public be expected to follow rules which do not apply to everyone?”

There can be no doubt that this decision greatly undermines public confidence in the criminal justice system.

The fact that consultation took place with the PSNI before the funeral is also of great concern, particularly as that interaction has seemingly helped those, who so clearly breached Covid-19 regulations, avoid prosecution.

The Chief Constable and the DPP must both face robust challenge as to their organisation’s role in this debacle and the damage their decisions have caused to public confidence in the criminal justice system.

Attempts to make excuses or blame confusion around the regulations simply further undermine the credibility and indeed tenability of both positions.”

*[BBC News published an article on its Northern Ireland page](#) in which the Ulster Unionist Party Leader Steve Aiken said that the service’s leadership had “failed” and called for the Chief Constable to resign*

“It is with regret that it has come to this, but it is clear that without the support of much of the community he seeks to serve, it is time for the chief constable to resign.”

In the same article quoted under the sub-headline “He’s wrong”, First Minister Arlene Foster said that her office had received no letters from the Chief Constable, who had suggested he had previously raised concerns about COVID-19 regulations relating to funerals. She said:

“He appeared with me on four occasions at press conferences and did not take the opportunity to raise any issues in relation to regulations so he’s wrong. He has been wrong in the way he handled the policing operation; he has been wrong in

the fact that he received a plan for the funeral; and he did not challenge that plan and deal with the issues.

There is no letter in the Executive Office from the Chief Constable.”

## 27 April 2021

*The Irish News published [an interview with Mervyn Gibson, Grand Secretary of the Grand Orange Lodge of Ireland](#), who said that Unionist politicians were “scapegoating” the Chief Constable over the PSNI’s handling of the funeral*

Mr Gibson is quoted as saying:

“Many of our membership believe he should resign but I think maybe scapegoating one person when there’s many people to blame for this situation right from the council [Belfast City Council] to the PPS and the PSNI.”

## Northern Ireland Policing Board 2 April 2021

We have also reviewed the [YouTube recording](#) of the public session of the Northern Ireland Policing Board (NIPB) held on 2 April 2021. This session sought to scrutinise the policing of Mr Storey’s funeral in light of the PPS decision not to prosecute 24 suspects for offences relating to breaches of the Regulations. We comment on and extract (below) some of the key issues and quotes raised from this session. It is not for us to critique the comments made during this session or interfere with the due process and responsibilities of NIPB business. We simply report the facts below.

We further note that, prior to the NIPB meeting, Mervyn Storey MLA spoke on the [DUP YouTube channel](#). His words are from an audio interview with subtitles. While the interview plays, his photograph is displayed against a backdrop of a photo of crowds at Mr Storey’s funeral. He said:

“Yet Sinn Féin, sadly because of what the police did, were able to be facilitated to have a public display of arrogance and of disrespect. That is the serious situation that we are in.”

We observed that, during the meeting, the Chief Constable and a senior officer answered questions from NIPB members about the PSNI handling of the funeral. They maintained that they were surprised by the PPS decision not to prosecute and the rationale as to why the evidential test could not be met.

Unionist members asked about the PSNI role in the lead-up to the funeral. The Chief Constable and the senior officer insisted that the planning and investigative approach was consistent with its published policing framework and national best practice. The senior officer said that persons involved in the organisation of, and participation in, the funeral were told that breaches of the Regulations would result in enforcement action.

Mervyn Storey MLA asked the Chief Constable:

“Do you accept that the extent of the engagement between the organisers and the police in the lead-up to the event actually availed those who took part in the event, availed of the reasonable excuse defence? So we will have over this

weekend issues of concern in relation to possible other Republican parades. What engagement has there been there? What knowledge does the police have? And what actions will the police take in ensuring that those illegal activities do not take place because the PPS clearly states that engagement – and it talks about the extent of the engagement – led to there being no prosecutions? Is that not an indictment of a way in which the police should not be operating in Northern Ireland?”

The Chief Constable responded:

“This is probably the heart of the matter of public concern. And I recognise this and all of the perceptions that go with it. I think turning forwards it is to remind people that the regulations remain in place and that our 4Es approach that we’ve relied on since the early days of policing the COVID Regulations remain. We still have a job to do to support the Health Minister to protect the public during this pandemic. So I think that there, to be quite candid, we were surprised professionally with the PPS conclusions because again, I don’t want to sort of fetter where HMIC [sic] will go.”

Mike Nesbitt MLA asked the Chief Constable during the Steven Nolan show on 31 March about his use of the term “negotiate”. The Chief Constable clarified that the PSNI did not negotiate with organisers.

A further question from Mike Nesbitt related to the PSNI’s use of the 4Es:

“4Es? What would you say about when people say that you may be engaged? You didn’t explain because you’re saying you were confused about the rules. You might not have encouraged and you certainly didn’t enforce.”

The senior police officer answered that the service did engage and that he personally was never confused about the Regulations. He added that the policing team did not draw a distinction between different elements of a funeral from service to burial. The PSNI working assumption was to plan consistently with the view that any gathering involving more than 30 people was likely to be breaching regulations.

He added:

“Throughout the process, Mike, we engaged with the people who, and as standard practice with funeral directors, with organisers, with family members, we engaged with them. We explained that that was our position, we encouraged them to [inaudible] that position. And we said that in the likelihood that they went over and above that that they could expect some enforcement action.”

Dolores Kelly MLA commented on the attendance at the funeral by some of her political colleagues:

“I think we’re nearly forgetting who organised this, you know, there’s a political party at the heart of government and in fact the joint first minister. Now, there were legislators at the event; legislators who brought those COVID regulations before this assembly and who voted on them and voted for them. And it’s incredulous, absolutely incredulous to anybody that they did not understand. I don’t understand how people did not get what ‘stay at home’ meant.”

It is also evident from the media commentary that there were, and still are, tensions and disagreements between some members of the Northern Ireland Executive and the PSNI in relation to the policing of the funeral and the interpretation of the Regulations. The PSNI maintains that it raised concerns about the clarity and lack of guidance associated with the Regulations on numerous occasions. We referred earlier in our report to the letter that the Chief Constable sent to the Minister of Health on 17 April 2020.

This tension, together with repeated calls for the resignation of the Chief Constable, has the potential to erode public confidence in the ability of the PSNI to provide an impartial, effective and legitimate policing service for all its communities.

# Our review of other funeral cases investigated by the PSNI

## The PSNI investigations into three other funerals presented to the PPS

Around the time of the funeral of Mr Storey, the Police Service of Northern Ireland (PSNI) was investigating other potential breaches of the Regulations relating to funerals. The scope of our inspection did not include reviews of the policing of any other funerals in Northern Ireland. But, to understand whether the PSNI approach to funerals was consistent, we felt that it was important to assess the three other funeral cases that were presented by the PSNI to the Public Prosecution Service (PPS) for decisions around the same time as Mr Storey's funeral.

The data and file content available for us to inspect was very limited. We were unable to review any details of the police planning prior to the day of each funeral.

We note that the Regulations in force were different in relation to each of the funerals and that they were frequently changing, as we reported in an earlier section (The PPS decision in relation to the lack of clarity within the Regulations). But this did not appear to alter the PSNI investigative approach, which remained consistent.

### Funeral on 8 April 2020

The first investigation concerned allegations of breaches of the Regulations at a funeral on 8 April 2020.

When the remains of the deceased were removed from the family home, they were flanked by a group of men who were not believed to be immediate family members. There was no police involvement at the time of the funeral. Some members of the public made a complaint to the police. It was alleged that these men may have breached the Regulations prohibiting "public gatherings" without having a "reasonable excuse".

The PSNI started an investigation on 23 April 2020. It tried to identify those involved and sought to dispose of the matter either by a fixed penalty notice or a report to the PPS for potential prosecution. The police focused their investigation on social media sources and photographs from members of the public to identify the men. This helped them to identify two men. When interviewed, the men denied any wrongdoing. The PSNI submitted a file of evidence to the PPS for consideration of a breach of Regulation 6 (restrictions on gatherings).

The PPS decision on 30 March 2021, as outlined in their public statement, was:

“To prosecute two individuals reported in connection with attendance at a funeral in County Tyrone in April 2020.”

The PPS has requested supplementary documentation from the PSNI and a full evidential file.

### **Funeral on 24 April 2020**

The second investigation concerned alleged breaches of the Regulations when an estimated 75 to 100 people gathered on the street around the home of a bereaved family.

The PSNI had deployed an evidence gathering team (EGT) that recorded approximately one hour of footage.

A supervisory officer to the investigation noted on the case file that:

“The approach of police to deal with the matter by way of community resolution notice or fixed penalty notice is to be welcomed provided you can identify those persons who should not be in attendance at the funeral.”

The evidence gathered on the day was subsequently reviewed. The PSNI identified only one suspect. This person was interviewed and denied any breach of the Regulations.

The PPS had asked to review the police investigation file. In its public statement, the PPS decision was:

“to offer a diversionary disposal to one individual reported in connection with attendance outside the home of a recently bereaved family in west Belfast in April 2020.”

An ‘informed warning’ was given to one person on 16 April 2021.

### **Funeral on 11 June 2020**

The third investigation concerned alleged breaches of the Regulations at a funeral where an estimated 200 people gathered outside the home of the deceased. The PSNI deployed an EGT.

The case file shows that the main lines of enquiry centred on the EGT’s footage, CCTV, social media, and police body-worn video. The case file was endorsed by a supervisor who commented that:

“The approach by police to deal with the matter by way of CRN [community resolution notice] or FPN [fixed penalty notice] is welcomed provided that the identities of those in attendance can be confirmed. Any investigation will need to prove that the persons present have breached the Regulations [and] would need to be of a level that would satisfy the courts.”

Police enquiries identified six possible suspects. The case file recorded an intention to issue CRNs to the suspects.

But before the notices were issued, on 25 September 2020, there was a direction on the file from a superintendent deciding:

“...that following consultation with the Public Prosecution Service, the police should obtain the account of the suspect, and then submit a file to them for consideration. Similar processes should be adhered to for other live funeral investigations to ensure consistency of approach from us corporately. It should be noted this only applies to retrospective investigations and does not in any way affect operational decision-making during incidents/events as they are happening.”

The six suspects were subsequently interviewed and a file was submitted to the PPS for consideration of breaches under Regulation 5. The PPS in its public statement decided:

“...to offer diversionary disposals to six suspects reported in connection with attendance at a funeral in east Belfast in early June 2020.”

This case is ongoing and awaits further direction.

## **A review of funeral data**

We reviewed a spreadsheet provided to us by the PSNI, listing 71 PSNI investigations between 7 April 2020 and 26 March 2021 relating to potential breaches of the Regulations. Because the spreadsheet didn't contain any details about police actions or investigation, we couldn't analyse this data or make any detailed comparisons between the events.

From the information the spreadsheet did contain, we found that 44 of these investigations related to funerals (excluding Mr Storey's). Of the 44 funerals, 18 involved 100 or more attendees and one funeral had 500 attendees. The PSNI took no further action in 11 of 18 of these larger funerals. This included the funeral reported to have 500 people present.

We would not want to draw any firm conclusions from such limited data. But it is clear most funerals with large numbers of people present resulted in either no further action or low-level action by the PSNI. Of those reported cases that resulted in sanctions, we found that most involved informal warnings or CRNs.

In our view, the way the PSNI investigated these alleged breaches of the Regulations is consistent with their approach to the funeral of Mr Storey. All were investigated in a manner that followed the PSNI *Funeral Guidance – COVID-19 Regulations* document. In each case, the PSNI investigated any potential breaches after the funeral. The investigations focused on viewing images taken at the time of the funeral to identify those present. The PPS was involved in prosecutorial decisions in all three cases.

# Our conclusions

Mr Storey's funeral took place on 30 June 2020. Nine months later, on 31 March 2021, the Public Prosecution Service (PPS) announced its decision not to prosecute 24 Sinn Féin politicians who had attended the funeral.

In the subsequent media and political furore, there were calls for the Chief Constable to resign and claims that the result confirmed there was two-tier policing in Northern Ireland. Conversely, others took the view that the Police Service of Northern Ireland (PSNI) was being scapegoated, and that wider political and systemic factors were to blame.

Days after the decision, the Minister of Justice for Northern Ireland commissioned us to examine the facts. After six weeks of intense inspection, we have gathered and evaluated the evidence. We have heard strongly held and well-articulated views from interviewees at different levels of seniority, from different backgrounds and with different motivations.

The evidence we have collected – which, of necessity, goes beyond the funeral itself – prompts us to address three fundamental questions about the PSNI handling of Mr Storey's funeral. We address these questions in this chapter.

First, was the engagement and 4Es approach for Mr Storey's funeral comparable with the approach in England and Wales? Second, did the PSNI act consistently with its approach to comparable events in Northern Ireland? And, third, were any special arrangements for Mr Storey's funeral justified?

We conclude by addressing the main elements that have been subject to public criticism in the wake of the funeral. These are:

- the PSNI;
- the Regulations;
- Sinn Féin politicians; and
- the PPS.

We also comment on the nature of the public criticism, much of which was unwarranted.

## Was the engagement and 4Es approach for Mr Storey's funeral comparable with the approach in England and Wales?

There are obvious pitfalls in making comparisons between the handling of Mr Storey's funeral – that of a prominent Republican, during the pandemic – and events elsewhere or at other times. We tried to find an event that would allow a useful comparison with the PSNI handling of Mr Storey's funeral: this proved difficult. However, we spoke to the Gold Commander for a funeral in Kettering, Northamptonshire, that occurred during the second lockdown, in November 2020.

Although this funeral was nothing like the size or complexity of Mr Storey's funeral, there were some similarities. Local neighbourhood officers engaged early on with the family of the deceased; there were assurances that the funeral wouldn't breach Health Protection Regulations; and the family stated that it would be low key with fewer than 30 attendees. It involved a part of the community prone to arousing strong opinions and, sometimes, antagonism. The police sent officers to monitor events on the day. But there was no specific policing plan and the 4Es approach wasn't applied in discussions with the family. Officers were sent to the funeral procession and road closures were put in place. But the funeral was described as having shown a blatant disregard for the 30-person limit.

After the funeral, an investigation was launched. A man who was believed to have organised the funeral was reported for summons. The Crown Prosecution Service reviewed the case file on the morning of the trial and decided that it couldn't prosecute because of a lack of evidence from the police. Despite much publicity, there was no remotely equivalent public or political outcry.

It is helpful to draw a distinction between two types of engagement in a policing context. The first is engagement that is in line with the College of Policing's authorised professional practice (APP). That is, for example, engagement where the police speak to organisers of an event to establish their intentions and/or consult with important community members. The second type comes from national guidance issued by the National Police Chiefs' Council (NPCC) and the College of Policing – the 4Es. This guidance encourages a consistent approach to dealing with restrictions to prevent or reduce COVID-19 transmission.

We assessed what the PSNI did to publicise and promote the use of the 4Es to its workforce. We also considered whether the PSNI applied the 4Es to events, such as funerals and other public gatherings, in a way consistent with police services in England and Wales.

We've answered this question in four parts.

### **Communicating the 4Es to PSNI officers and staff, and the public**

The PSNI has published regular guidance for its workforce on applying the 4Es approach to potential breaches of the Regulations. We reviewed much of this communication. It explained in detail how officers should apply each of the 4Es when encountering people suspected to be in breach of the Regulations.

The PSNI also published a comprehensive document to its officers on the methods used by trained police negotiators to engage with people. It showed how officers could apply negotiating skills during COVID-19-related incidents. We found this to be an innovative way of helping officers build a rapport with people. We reviewed the PSNI website and found it explained in detail the types of enforcement action officers could take.

In our report, [\*Policing in the Pandemic – the police response to the Coronavirus Pandemic during 2020\*](#), published in April 2021, we found that all police forces we inspected had adopted the 4Es approach suggested by Operation Talla and the NPCC in its guidance for officers. Like the PSNI, most police forces found it difficult to give a consistent message against a backdrop of very frequent changes to the Regulations. The PSNI was among the few police services to have publicised the 4Es on their websites. It was one of two police services to have reviewed in depth the lessons learned and new processes introduced to address the findings.

Our conclusion is that the PSNI worked hard to develop a culture of using the 4Es effectively in its approach to reports of people suspected of breaching the Regulations. The public-facing website also gave useful information and described how the PSNI would decide to enforce the Regulations. The service gave public health messages and explained much of its work in its many social media posts on different platforms. It is clear to us that the PSNI had developed a foundation of understanding of what the 4Es should mean to the police and public.

### **Complying with national standards – Authorised Professional Practice**

In handling the funeral, the PSNI broadly complied with the communication section of the College of Policing's Public Order APP. This discusses communicating with community mediators and crowd engagement. The APP describes in detail a more general approach to engagement than the explanation of engagement in the 4Es. In its broadest sense, and in compliance with the APP, we took the role of Gerry Kelly MLA to be that of a community mediator.

The PSNI knew it could extend its reach into the community through Mr Kelly's influence with the Storey family, mourners and other parties organising the funeral. PSNI commanders were reassured that their concerns about a show of paramilitary strength had been assuaged. The link between Mr Kelly and the PSNI helped to reduce any potential conflict in the community and encouraged the flow of information. We explain below the extent to which that flow of information could have been developed further.

The APP on communication also explains the role of the Silver Commander in engaging in early dialogue when planning for a protest. We do not intend to confuse the nature of a funeral with a protest, but the guidance is appropriate for planning all events. The PSNI has met much of this guidance. However, we didn't see records of a discussion with Mr Kelly about what would be desirable, acceptable and unacceptable outcomes.

## **The 4Es during the PSNI planning for the funeral**

During our inspection, we found that many, but not all, of the PSNI planning documents referred to the intended use of the 4Es, should breaches of the Regulations be seen or reported.

The NPCC guidance says that officers should apply the 4Es when they encounter a person(s) they suspect to be in breach of the Regulations. Therefore, during the PSNI planning and preparation, the 4Es didn't strictly apply. No one was, in that period, suspected of breaching the Regulations. But police commanders did anticipate that a large number of people would attend the funeral and that breaches of the Regulations would be likely.

It would not have been unreasonable to expect the police commanders to explain to Mr Kelly the risks to public health, the NHS and (as best they could) the Regulations as they applied to the funeral on 30 June 2020.

In our recent report, [\*An inspection of the Metropolitan Police Service's policing of a vigil held in commemoration of Sarah Everard\*](#), we saw evidence of the Metropolitan Police Service (MPS)'s engagement with the organisers of the vigil and other interested parties. In its planning for the event, the MPS applied the 4Es in a rather more obvious way. Senior officers explained to organisers the risks to public health and the relevant parts of the Regulations. They related how they might be breached if the vigil continued as organisers had planned it. In the days and hours leading up to the vigil, the MPS extensively encouraged organisers not to continue with the event and encouraged people to instead pay their respects without breaching the Regulations. This was achieved by a variety of communication methods.

Again, we acknowledge that no direct comparison can be made between these two events. However, if the PSNI assumed that a breach of the Regulations was likely, we would have expected those officers in dialogue with Mr Kelly to have worked within the spirit of the 4Es and engaged, explained and encouraged compliance with the Regulations rather more robustly than appears to have been the case. While frequent changes to the Regulations caused confusion, we would nevertheless have expected the PSNI to have explained the effect of the Regulations as they interpreted them at the time.

We were told that PSNI commanders expressed concern about potential breaches of the Regulations during telephone conversations with Mr Kelly. But, without comprehensive police records of those exchanges, the extent to which the risks and Regulations were explained and compliance encouraged remains unclear.

## **Use of the 4Es with mourners**

PSNI commanders and officers assigned to the police operation witnessed suspected breaches of the Regulations throughout the funeral. These related to the gathering at the family home of Mr Storey, the routes of the cortège, the church, and the cemetery and crematorium services. But we agree with the PSNI that, on the day of the funeral, any attempt to apply the 4Es approach by its officers had the potential to result in, at the very least, tension between the police and the community.

While the PSNI planning documents indicated the intention to use the 4Es approach for Mr Storey's funeral, in fact there was little evidence of the practical application of the approach on the lead-up to the funeral, or on the day. This is probably the area in which the PSNI actions differ most conspicuously from those we would expect in England and Wales. But, as we discuss in the third question, there are reasons why this difference is understandable.

## **Did the PSNI act in a way consistent with the approach taken for comparable events in Northern Ireland?**

Our second main question was whether the PSNI had made similar decisions and acted similarly for other funerals, commemorations and vigils. This would help us understand whether the PSNI approach and decision-making was broadly consistent. As we have said, the nature of Mr Storey's funeral means that care must be taken not to draw false comparisons with events of a fundamentally different nature.

We compared, as far as we were able, the PSNI approach to policing funerals and similar events during the pandemic. We examined data, provided to us by the PSNI, where suspected breaches of the Regulations had been observed by PSNI officers or reported by the public. The data contained limited information on dozens of events and the outcome of investigations. We reviewed three cases in detail.

According to PSNI estimates, mourners numbered about 2,000 along the route between the Storey family home and St Agnes's Church, making it the largest funeral the PSNI has had to police during the pandemic. The second largest funeral known to the PSNI in the same period was reported to have had about 500 mourners. The PSNI wasn't notified about that funeral, but still started an investigation that depended on identifying suspected offenders from the media and with social media posts as the only lines of enquiry.

When the PSNI was notified in advance of a funeral, and when suspected breaches of the Regulations were witnessed by officers, we found police commanders to be consistent in their approach. They considered both evidence gathering teams (EGTs) and the air support unit to gather evidence. Several funerals were notified to the PSNI and assurances made that mourners would abide by the Regulations, but apparent breaches were later identified. Those events were also investigated.

In almost every case, whether notified before or not, the PSNI checked media publications and social media accounts for evidence of the numbers of mourners gathered, and whether they breached the Regulations in place at that time. If investigators had enough evidence, investigations were opened, and the identities of people suspected to have breached the Regulations were sought.

There were several investigations into funerals (and similar events) that did not lead to prosecution. Using the same evidential and public interest tests as the PPS, PSNI decision-makers followed national prosecution guidelines when withdrawing those cases before they had reached the PPS. We cannot comment on the correctness of those decisions, but we can say that it is acceptable practice for the police to consider whether prosecution of a summary offence is necessary and proportionate before evidence is considered by the PPS.

It is our conclusion that the PSNI investigated these alleged breaches of the Regulations in a manner consistent with the approach taken after the funeral of Mr Storey.

## **Were any special arrangements for Mr Storey's funeral justified?**

This question, we believe, is at the heart of this inspection.

Our starting point is that we recognise the unique environment in which the PSNI operates: it needs to manage tensions and challenges faced by no other police service in the UK. At any time, the policing of the funeral of a figure such as Mr Storey had the potential to be controversial. The unprecedented circumstances of the pandemic – with, as we have described, fast-changing and confusing Regulations – made the task even harder.

The PSNI prioritised security and public order over enforcing the Regulations. Whatever was written in the Gold Strategy, it seemed to us that the priorities of senior officers were, in order:

- that the funeral should pass off without violent incident or serious disorder;
- that the funeral should pass off without any of the more provocative symbology associated with paramilitary funerals;
- and that – a perhaps distant third – there should be no serious breach of the Regulations.

Judged against the first two priorities, the PSNI might reasonably have viewed the policing operation a success. And, as we have pointed out, because of the confusing Regulations, it is by no means clear that the third priority wasn't also met.

Tempting as it might be to condemn this order of priorities – as showing preferential treatment towards the organisers of one particular funeral or one political group – it seems to us that it would be naive not to expect some change in priorities for a funeral such as Mr Storey's. We would have expected a similar approach for a figure of equivalent status from the Loyalist community. Whether such an approach is justified is a moral and political question, rather than one of police efficiency and effectiveness: it is a question best left to others to determine.

We are, in some respects and to a limited extent, critical of the PSNI actions in the following section. In particular, whereas it is easy to understand why compliance with the Regulations might not have been the PSNI's highest priority, it doesn't follow that there is not more it could have done.

Last, the Gold Commander's decision to begin an investigation into the suspected breaches of the Regulations is consistent with decisions made after other funerals and similar events during the same period. Equally, it was PSNI practice not to engage the PPS until investigators considered that they had enough evidence to prosecute offenders. That practice has now changed.

## Conclusion

If public confidence in the PSNI suffered because of the handling of Mr Storey's funeral – and it is our view that, unfortunately, it did – then there are a number of factors to consider.

### The PSNI

There are grounds for criticising the PSNI approach before, during and after the funeral. But we should emphasise that these are not especially serious failings: in any other part of the UK, they would pass without sparking public controversy. They do not approach the level at which censure of individual officers, or resignations, would be justified.

The most significant criticism is of the pre-funeral engagement, which did not, in our view, match the best examples we have seen in other police services. Although the level and amount of engagement were commendable, the PSNI did not cover the 4Es as thoroughly as it might have done. There was a degree of informality in the PSNI dealings with organisers that, in the unique circumstances of Northern Ireland, is easily understood and, perhaps, forgivable: senior officers are bound to have regular contact with a relatively small cohort of politicians and community leaders from across the political spectrum. But this comes with potential disadvantages. During engagement with funeral organisers, the PSNI should have more formally adopted the 4Es approach. It could have – and should have – done more to explain the Regulations (as best it could), to encourage compliance and to advise of the potential consequences if the Regulations were breached. This would have made clear what the police expected of the organisers and attendees. We have also criticised some procedures, especially record-keeping, that should be improved in future engagement.

But it is important that these remarks are seen in context. On the day of Mr Storey's funeral, the approach adopted was sensitive and in line with the strategy set by the Gold Commander. There is no serious suggestion that PSNI officers on the ground could or should have done anything to deal with potential breaches of the Regulations during the funeral. Fundamentally, the policing operation achieved its aim, which was set through the lens of public security rather than compliance with the Regulations.

Most importantly, we saw nothing to suggest that there was any bias towards one community or another in the way the PSNI dealt with this funeral. We have seen nothing to suggest a funeral of a leading figure in the Loyalist community wouldn't have been approached in the same way.

Annex A lists our recommendations for the PSNI.

### The Regulations

The Regulations at the time of the funeral were both confusing and controversial. That alone posed an arguably insurmountable problem for the PSNI. Furthermore, across the UK, the police needed to consider the relationship between the Regulations and human rights law.

Increasingly, senior police officers are required to demonstrate an advanced understanding of human rights law. When officers are faced with making difficult decisions, it is essential that the law is clear.

Earlier in this report (The Northern Ireland Policing Board Review), we quote extensively from Mr John Wadham's report for the Northern Ireland Policing Board. We support his conclusions and recommendations wholeheartedly. As we have stated in previous reports, it is incumbent on any legislature to set rules that can be accurately interpreted and applied, and that the public is likely to accept and consent to.

In our [Policing in the pandemic](#) report, we commented favourably on the effectiveness of a police liaison unit in Wales that strategically links the four police forces, the four police and crime commissioners, and the Welsh Government. We drew a contrast between the positive effect of such a forum in Wales and the lack of anything similar in England. It was disappointing to see that in Northern Ireland too – with a single police service – it proved impossible to establish effective working links between the Department of Health and the PSNI.

The evidence given to us by the PSNI showed that they tried to be more involved and engaged with those responsible for the Regulations, both as they were drawn up and amended, and afterwards for guidance. But, for whatever reason (and no blame can be attached to the PSNI), this was not achieved. As a consequence, senior police don't seem to have been made aware of what changes to expect in advance, and no consolidated version of the Regulations was available until 23 July 2020. It is no surprise that the PSNI was unable to obtain a concise and accurate summary of the effect of the key provisions on 30 June 2020.

## **Sinn Féin**

Sinn Féin politicians played a major role in organising Mr Storey's funeral and many senior figures attended on the day. It is not difficult to see why the reaction from some quarters was one of outrage. For many who had lost loved ones, and been unable to have the funerals they wanted, it must have grated. And, for others with political rather than personal reasons, it was easy to interpret the funeral as wilfully disregarding the Regulations for political ends.

We cast no judgments on political parties' actions or motives. However, from what we say in our chapter on the legal context, we think it would have been reasonable for the politicians attending the funeral to have believed they were acting within the Regulations. If they believed themselves not to be – as some have asserted – it is our conclusion that they were probably wrong.

Mr Kelly chose not to share his account of his conversations with the PSNI commanders in the run-up to the funeral with us. But we saw nothing to suggest that the manner in which he engaged with the PSNI was anything other than open and professional.

## **The PPS**

The PPS decision not to prosecute undoubtedly sparked much of the criticism of the PSNI. In our assessment of the decision not to prosecute, we find the PPS arguments wholly persuasive. We have taken our own, independent legal advice, and have reached the same conclusion: we are not confident that any of the funeral attendees could be shown to have committed an offence under the Regulations. We did question whether, given that conclusion, it was necessary for the PPS to refer to the police engagement and policing in their determination. This potentially added to the criticism of the PSNI. However, on balance, we think the PPS had good reason to do so: by providing a full explanation of their decision, which included the two bases upon which a 'reasonable excuse' defence could be raised, the PPS demonstrated transparency in their decision-making.

## **Condemnation of the PSNI**

We end this section by commenting on the condemnation of the PSNI and the calls for the Chief Constable to resign that followed the PPS decision not to prosecute. The context is different, but there are parallels with what we said after the vigil for Sarah Everard in London:

“The chorus of those condemning the Metropolitan Police and calling for the resignation of the Commissioner ... presumably with a very limited understanding of what had happened, was unwarranted. Whereas a certain degree of uninformed commentary ... is inevitable, in this case some of the leading voices were those in positions of some responsibility.”

We would have no wish to take sides in any political dispute – least of all in Northern Ireland. These comments should not be seen as critical of any individual politician: we are making a more general point. Our interest is in the efficiency and effectiveness of policing. In this, trust and confidence are essential building blocks to strong relationships between the police and all the communities they serve. All politicians and community leaders have a part to play in working with the police to build and maintain public confidence. They should be mindful of the consequences, intended or otherwise, of their comments.

# Annex A – Learning

## **National Police Chiefs’ Council 4Es guidance should be communicated more widely**

The Police Service of Northern Ireland (PSNI) didn’t cover the 4Es approach as thoroughly as it might in conversations with organisers or the communities likely to attend Mr Storey’s funeral.

It was reasonable to assume that the Regulations would be breached on the day of the funeral. The information available to the PSNI in the build-up to the funeral clearly stated that the gathering of family and mourners, including many senior politicians, was likely to far exceed the restrictions imposed by the Regulations. The PSNI could have done more to engage, explain and encourage organisers to influence mourners, politicians and the community not to engage in activity that could breach the Regulations.

If it was the PSNI intention to enforce breaches of the Regulations retrospectively, the organisers and communities should have been told, in line with the PSNI premise of “no promises, no surprises”.

It is incumbent on the police to make their intentions clear to as many people as possible. Talking to important community contacts, and using social media and other publicity, widens the reach of messages.

### **Recommendation**

We recommend that, when breaches of the Regulations are anticipated, the Police Service of Northern Ireland communicates the 4Es approach as broadly as possible through a range of channels.

## **Engaging the right specialist advice throughout event planning**

Late involvement of the Police Service of Northern Ireland (PSNI) Legal Services Department on the day of the funeral made it very difficult for the PSNI to get accurate advice about the legal effects of the amendments that came into effect on 29 June 2020. It would have been much easier to understand the impact of those amendments if the PSNI had worked more closely with its Legal Services Department along the way about the effect of the initial Regulations and the first eight amendment Acts.

### **Recommendation**

In the early planning stages of an event, senior Police Service of Northern Ireland officers (such as the Gold and Silver Commanders) should consider what support they need from specialists, such as the Legal Services Department. Engaging early on would make sure they can access all information critical to the successful planning and deployment of an operation.

## **Detailed record keeping**

Police commanders are responsible and accountable for policing an operation and events. So it is important that they maintain detailed records at the time of conversations, text messages and other correspondence with organisers and other interested parties before, during and after events. Records should be shared with the other parties, for example, in a follow-up email after a planning meeting. This will help make misunderstanding or dispute about what was said or agreed less likely.

### **Recommendation**

The Police Service of Northern Ireland should make and retain detailed records at the time of conversations with organisers of events. Records should be shared with other parties to make misunderstanding or dispute about what was said or agreed less likely.

## **Debriefing should be incorporated into the daily business of policing**

Effective debriefing of events is essential for organisational learning. Good aspects of an operation can be repeated and areas for development enable the force to improve before the next event. Effective debriefing allows the police to plan and conduct operations consistently. Incorporating debriefing into daily policing can significantly improve outcomes. Evaluating outcomes and processes of operations improves corporate knowledge and develops staff.

### **Recommendation**

The Police Service of Northern Ireland should carry out a formal and structured debrief at the end of a policing operation.

During our inspection, the Public Prosecution Service made certain recommendations to us. We have considered these and make the following recommendations:

## **Clearly outline the purpose of engagement**

Effective policing depends on engaging and communicating well. Police engagement is an important part of any event.

It is essential that the Police Service of Northern Ireland clearly state and record the precise purpose of any engagement with those planning an event. This will help the service show that it hasn't acquiesced in planning or breached the law.

### **Recommendation**

We recommend that the Police Service of Northern Ireland record the purpose and rationale of its engagement with event planners. Records should be clear, accurate and auditable.

## **Exchanging plans**

The police should ask organisers to make clear why they are passing any plan, risk assessment or other document to the police. And they should be explicit that receipt of a plan doesn't constitute approval of its contents.

The police should make clear to organisers that aspects of a plan passed to them may give rise to potential criminal offences. They should also remind organisers of the potential for enforcement in the event of breaches of the law.

### **Recommendation**

The Police Service of Northern Ireland should engage as early as possible with event organisers to discuss proposed plans and risk assessments. It should also identify any potential criminal offences that could result from the proposed plan. The police should state that their receipt of the plan doesn't mean that they approve of its contents. The police should remind the organisers that breaches of the law may lead to enforcement.

## **Access to independent professional contacts for advice**

The Police Service of Northern Ireland should clearly understand the law and the circumstances in which those participating in an event may, or are likely to, breach the law. If the law is likely to change before the event, the police should identify independent and reliable points of contact so they can find out about anticipated changes. These contacts will help them quickly confirm the details of changes as soon as possible after they have been enacted.

### **Recommendation**

The Police Service of Northern Ireland should identify independent contacts to help it interpret changes in the law or other circumstances that could affect the policing of an event.

May 2021 | © HMICFRS 2021

[www.justiceinspectorates.gov.uk/hmicfrs](http://www.justiceinspectorates.gov.uk/hmicfrs)